

PB# 87-53

Windsor Counseling Group

19-4-58

Site Plan
WINDSOR COUNSELING GROUP 87-53
ZIMMERMAN

Approved 6/27/91

General Receipt

9115

TOWN OF NEW WINDSOR

555 Union Avenue
New Windsor, N. Y. 12550

Received of

Zimmerman Engineering & Surveying \$ 25.00

Twenty-five 00/100 DOLLARS

For Planning Board Application Fee #87-53

DISTRIBUTION

FUND	CODE	AMOUNT
Check # 2819		25.00

By Pauline G. Townsend
ES

T. A. A. A.

General Receipt

12094

TOWN OF NEW WINDSOR

555 Union Avenue
New Windsor, N. Y. 12550

Received of

Windsor Counseling Group \$ 28.00

Twenty-eight and 00/100 DOLLARS

For Assessor's Change List - 3.00 postage

DISTRIBUTION

FUND	CODE	AMOUNT
CR 5868		28.00

By Pauline M. Townsend
es

Town Clerk

Title

Williamson Law Book Co., Rochester, N. Y. 14609

General Receipt

12095

TOWN OF NEW WINDSOR

555 Union Avenue
New Windsor, N. Y. 12550

Received of

Windsor Counseling Group \$ 503.00

Five Hundred Three 00/100 DOLLARS

For P.B. #87-53 Approval \$ 100.00 Engineering \$ 403.00

DISTRIBUTION

FUND	CODE	AMOUNT
CR 5869		503.00

By Pauline M. Townsend
es

Town Clerk

Title

Williamson Law Book Co., Rochester, N. Y. 14609

General Receipt 12094

TOWN OF NEW WINDSOR
555 Union Avenue
New Windsor, N. Y. 12550

Received of Windsor Counseling Group June 27 19 91 \$ 28.00

Twenty-eight and 00/100 DOLLARS

For Assessor's Clearance List - 3.00 postage

DISTRIBUTION:

FUND	CODE	AMOUNT
CR 5868		28.00

By Pauline M. Townsend
Town Clerk
Title

Williamson Law Book Co., Rochester, N. Y. 14609

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TOWN OF NEW WINDSOR
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New Windsor, N. Y. 12550

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CR 5869		503.00

By Pauline M. Townsend
Town Clerk
Title

Williamson Law Book Co., Rochester, N. Y. 14609

Sew
Highway
Fire
Dept of Public Works (County Highway)

5-5-88

Building
P.B. Engineer
Fire Inspr.
D.O.T.
Highway
Sewer
O.C.P.
D.P.W.
Water

County File No. NWT 22-88 M

COUNTY PLANNING REFERRAL

(Mandatory County Planning Review under Article 12-B,
Section 239, Paragraphs 1, m & n, of the
General Municipal Law)

Application of Windsor Counseling Group
for a Site Plan - Within 500' of NYS Rt. 94
County Action: Local Determination

LOCAL MUNICIPAL ACTION

The Above-cited application was:

Denied Approved

Approved subject to County recommendations

County File No. NWT 15 91 M

COUNTY PLANNING REFERRAL

(Mandatory County Planning Review under Article 12-B,
Section 239, Paragraphs 1, m & n, of the
General Municipal Law)

Application of Windsor Counseling Group
for a Site Plan Review - Within 500' of NYS Rte. 94
County Action: Local Determination

LOCAL MUNICIPAL ACTION

The Above-cited application was:

Denied Approved

Approved subject to County recommendations

(Date of Local Action)

(Signature of Local Official)

This card must be returned to the Orange County Department of Planning
within 7 days of local action.

ZIMMERMAN
PLANNING GROUP 87-53

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

-against-

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent,

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules,
Reversing a Certain Decision Adopted by
Respondent on April 26, 1989.

-----X
SILVERMAN, J.

The instant petition is an Article 78 special proceeding in the nature of mandamus to review. It challenges the decision of Respondent Planning Board of April 26, 1989. That decision denied Petitioner's application for site plan approval based on considerations of inadequate lot width, the belief that the property was being used for residential purposes and inadequacy of the existing road.

The property in question is designated on the Tax Map of the Town of New Windsor as Section 19, Block 4, Lot 58. It is also known as 194A Quassaick Avenue. The property was purchased by the Petitioner in 1985. It is improved with a one story building. Quassaick Avenue is a private unpaved road.

Respondent has submitted a motion to dismiss, and

DECISION/ORDER

Index No.
3608/89

Petitioner thereafter filed an affidavit in opposition. Respondent submitted a further reply affidavit on July 28, 1989. The Court notes four subsequent sur-reply's by Petitioner and three sur-reply's by Respondent and takes this opportunity to remind both counsel of the significance of §§ 3011 and 3012 of the CPLR.

In this particular instance Petitioner had applied for a site plan approval by the Planning Board. That site plan approval was denied for reasons alluded to above. Petitioner asserts the denial to be arbitrary and capricious and an abuse of discretion. These allegations are based on the arguments: (1) that the property is located in a "neighborhood commercial" zone which permits commercial use as of right; and (2) the approval by the Planning Board of two highly similar applications in the near and general vicinity of the property in question.

Respondent's motion to dismiss raises arguments of: (1) Petitioner seeking to review a non-final determination; (2) Petitioner failing to exhaust administrative remedies (failure to appeal to ZBA); and (3) Petitioner's application lacks good faith in its objective.

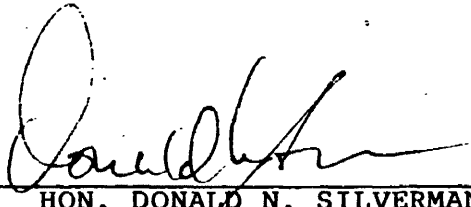
It is clear from § 274-A that in matters concerning approval of site plans the Planning Board is the final arbiter at the administrative level and that appeal may be taken, by Article 78 proceeding, directly.

Town Law § 274-A(3) provides that "any person aggrieved by any decision of the Planning Board ... may apply to the Supreme Court for review by proceeding under Article 78 of the Civil Practice Law and Rules."

Accordingly the instant motion to dismiss is denied. Respondent is directed to submit their answer within fourteen (14) days of this Decision and Order.

So Ordered.

Dated: White Plains, New York
October 6, 1989



HON. DONALD N. SILVERMAN
ACTING SUPREME COURT JUSTICE

FABRICANT & LIPMAN
Attn: Alan S. Lipman, Esq.
One Harriman Square
Goshen, New York 10924

DANIEL S. LUCIA, ESQ.
Temple Hill Road
RD #2
New Windsor, New York 12550

Delete inappropriate italicised words. Attach copy of the notice of appeal.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of
WINDSOR COUNSELING GROUP,
Petitioner,
— against —
THE PLANNING BOARD OF THE TOWN
OF NEW WINDSOR, NEW YORK,
Respondent.

Index No. 3608-89

CIVIL APPEAL
PRE-ARGUMENT STATEMENT

Appeal taken from Supreme Court
County of Orange
Judge Hon. DONALD N. SILVERMAN, Acting
Date of entry of the ~~judgment~~ order J.S.C.
October 16, 1989
Notice of appeal filed November 21, 1989

Full name of parties:

WINDSOR COUNSELING GROUP, Petitioner and Respondent on Appeal

THE PLANNING BOARD OF THE TOWN OF NEW WINDSOR, NEW YORK, Respondent
and Appellant

Changes in parties: NONE

Name of Counsel

For Appellant DANIEL S. LUCIA, ESQ.

Address

Temple Hill Rd., R.D.#2 (914) 561-7700
New Windsor, N.Y. 12550

Telephone

For Respondent ALAN S. LIPMAN, ESQ.
FABRICANT & LIPMAN, ESQS.

1 Harriman Sq., PO Box 60 (914) 294-7944
Goshen, N.Y. 10924

Method of disposition in trial court:

☐ Judgment after Court-Jury trial

☐ Article 78 proceeding:

☐ Damages granted denied: Amount \$.....

☒ Appeal from order: (short description of order)

denying Respondent's motion to dismiss the petition as a matter of law

Brief description of nature of cause of action or special proceeding

(contract, personal services, sale of goods, etc.; tort-personal injury, automobile, sidewalk accident, etc.; equity, specific performance, injunction, etc.):

This is an Article 78 proceeding which seeks to reverse a decision
adopted by Respondent on April 26, 1989.

State briefly result below:

Hon. Donald N. Silverman, Acting J.S.C. entered an Order denying
Respondent's motion to dismiss the petition.

State whether any related action or proceeding is now pending in any court in this or any other jurisdiction, and if so,
the status thereof:

An Article 78 proceeding entitled WINDSOR COUNSELING GROUP vs. THE
ZONING BOARD OF APPEALS OF THE TOWN OF NEW WINDSOR, NEW YORK, is pending
in this Court, Index No. 6701-86. ZBA decision annulled and matter
remitted to ZBA for findings of fact and determination.

State briefly grounds for seeking reversal, annulment or modification:

Hon. Donald N. Silverman, Acting J.S.C. erred in finding that the
April 26, 1989 Decision of Respondent was sufficiently final to entitle
Petitioner to seek review thereof on this Article 78 proceeding.

Issues proposed to be raised on appeal:

1. Whether the April 26, 1989 Decision of Respondent was a final determination on Petitioner's site plan, where Respondent specifically referred the Petitioner to the ZBA due to inadequate lot width.
2. Whether the failure of the Petitioner to apply to the ZBA, following the referral to the ZBA by the Respondent (which is within the ZBA's jurisdiction pursuant to Zoning Local Law 48-33 A.), constitutes a failure of Petitioner to exhaust its administrative remedies.
3. Whether this Article 78 proceeding by Petitioner was brought in good faith for a legitimate and proper object.

Second Department appeals require the following information:

- ☐ I, attorney for appellant, hereby certify that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript.
- ☐ I have already ordered the transcript to be prepared; OR other arrangements have been made in accordance with the order of Justice dated 19.
- ☒ The appeal is taken from an order where there were no minutes taken.

Dated November 21, 1989
New Windsor, New York

COUNSEL FOR APPELLANT

Daniel S. Lucia

Index No.

Pre-Argument Statement

Attorney(s) for Appellant

Office and Post Office Address

Service of a pre-argument statement of which the within is a copy admitted this 19 day of

Attorney(s) for Respondent

State of New York, County of ss.:
being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at 19
That on the day of deponent served the within on
attorney(s) for herein, at his office at during his absence from said office strike out either (a) or (b)
(a) by then and there leaving a true copy of the same with
his clerk; partner; person having charge of said office. (b) and said office being closed, by depositing the same, enclosed in a sealed wrapper directed to said attorney(s), in the office letter drop or box.

Sworn to before me this 19 day of

State of New York, County of ss.:
being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at 19
That on the day of deponent served the within on
attorney(s) for at the address designated by said attorney(s) for that purpose by depositing same enclosed in a postpaid properly addressed wrapper, in a post office — official depository under the exclusive care and custody of the United States post office department within New York State.

Sworn to before me this 19 day of

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of
WINDSOR COUNSELING GROUP,
Petitioner,

-against-

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.

Index No. 3608-89.

NOTICE OF APPEAL

IAS Justice: HON.
DONALD N. SILVERMAN,
Acting J.S.C.

PLEASE TAKE NOTICE, that the above named Respondent,
THE PLANNING BOARD OF THE TOWN OF NEW WINDSOR, NEW YORK,

hereby appeal(s) to the Appellate Division of the New York Supreme Court in
and for the Second Judicial Department

from the Decision/Order of the Supreme
Court of the State of New York, County of Orange in this action, entered in the office
of the Clerk of said Court

on the 16th day of October, 1989, which denied the Respondent's
motion to dismiss the petition herein as a matter of law,

and from each and every part thereof.

Dated: New Windsor, New York
November 21, 1989

Yours, etc.,

DANIEL S. LUCIA, ESQ.

Attorney(s) for Respondent and Appellant
Office and P.O. Address

TO: FABRICANT & LIPMAN, ESQS. Temple Hill Road
One Harriman Square R.D. #2
P.O. Box 60 New Windsor, New York 12550
Goshen, New York 10924 Telephone No. (914) 561-7700

Attorney(s) for Petitioner and Respondent;

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of
WINDSOR COUNSELING GROUP,
Petitioner,

-against-
THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,
Respondent.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.

Index No. 3608-89

NOTICE OF APPEAL

IAS Justice: HON.
DONALD N. SILVERMAN,
Acting J.S.C.

PLEASE TAKE NOTICE, *that the above named* Respondent,

THE PLANNING BOARD OF THE TOWN OF NEW WINDSOR, NEW YORK,

hereby appeal(s) to the Appellate Division of the New York Supreme Court in
and for the Second Judicial Department

from the Order *of the* Supreme
Court of the State of New York, County of Orange *in this action, entered in the office*
of the Clerk of said Court

on the 9th *day of* January, 19 90 *which denied the Respondent's*
motion to dismiss the petition herein as a matter of law,

and from each and every part thereof.

Dated: New Windsor, New York

February 14, 1990

Yours, etc.,

DANIEL S. LUCIA, ESQ.

Attorney(s) for Respondent *and Appellant*
Office and P.O. Address

TO: FABRICANT & LIPMAN, ESQS. Temple Hill Road
XX One Harriman Square R.D. #2
P.O. Box 60 New Windsor, New York 12550
Goshen, New York 10924 Telephone No. (914) 561-7700

Attorney(s) for Petitioner *and Respondent;*

State of New York, County of

ss.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19
deponent served the within notice of appeal on

attorney(s) for

herein, at his office at

during his absence from said office

~~strikes out either (a) or (b)~~

(a) by then and there leaving a true copy of the same with

his clerk; partner; person having charge of said office.

(b) and said office being closed, by depositing a true copy of same, enclosed in a sealed wrapper directed to said attorney(s), in the office letter drop or box.

Sworn to before me this
day of 19

State of New York, County of

ss.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19
deponent served the within notice of appeal on

attorney(s) for
at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States Postal Service within New York State.

Sworn to before me, this
day of 19

Index No. 3608-89

SUPREME COURT STATE OF N.Y.
COUNTY OF ORANGE

In the Matter of the
Application of

WINDSOR COUNSELING GROUP,
Petitioner,
-against-

THE PLANNING BOARD OF THE
TOWN OF NEW WINDSOR, NEW
YORK,

Respondent.

Notice of Appeal

DANIEL S. LUCIA, ESQ.

Attorney(s) for Appellant

Office and Post Office Address

Temple Hill Road, R.D. #2
New Windsor, New York 12550
Telephone No. (914) 561-7700

*Service of a notice of appeal of which the
within is a copy admitted this
day of 19*

Attorney(s) for Respondent

SHORT ORDER FORM

To commence the statutory
time period for appeals as
of right (CPLR 5513 [2]), you
are advised to serve a copy
of this order, with notice
of entry, upon all parties.

SUPREME COURT - STATE OF NEW YORK
COUNTY OF ORANGE

PRESENT: HON. DONALD N. SILVERMAN
ACTING J.S.C.

FILED
AND
ENTERED

ON 1990

ORANGE
COUNTY CLERK

-----X
In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

INDEX NO.
3608/89

- against -

MOTION DATE & NO.
7/17/89

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK

Respondents.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules,
Reversing a Certain Decision Adopted by
Respondent on April 26, 1989.

-----X
The following papers numbered 1 to 259 comprise this
motion to dismiss the instant petition commencing a special
proceeding. The special proceeding is brought pursuant to CPLR
Article 78. It challenges Respondent's April 26, 1989 decision and
May 16, 1989 notice of disapproval of site plan application, as
arbitrary, capricious, abusive of discretion and lacking the
support of credible evidence. Respondent has moved to dismiss,
contending non-finality of the decision, failure to exhaust
administrative remedies and lack of good faith for a legitimate and
proper object.

Papers Numbered


PETITION	1-106
MOTION TO DISMISS/EXHIBITS	107-171
ANSWERING AFFIDAVITS	172-181
REPLYING AFFIDAVITS	182-196
SUR-REPLY AFFIDAVITS (4 sets)	197-259

The Court finds that Respondent's decision of April 26,
1989, was a final decision from which Petitioner may properly bring
this Article 78 proceeding (Matter of Martin v. Ronan, 44 N.Y.2d
374 (1978); Matter of Edmead v. McGuire, 67 N.Y.2d 714 (1986)).

Respondent's motion to dismiss is therefore denied.
Respondent is directed to provide answering papers and certified
return by January 31, 1990.

So Ordered.

Dated: January 8, 1990


HON. DONALD N. SILVERMAN
ACTING SUPREME COURT JUSTICE

FABRICANT & LIPMAN
Attn: Alan S. Lipman, Esq.
One Harriman Square
Goshen, New York 10924

DANIEL S. LUCIA, ESQ.
Temple Hill Road
RD #2
New Windsor, New York 12550

Delete inappropriate italicised words. Attach copy of the notice of appeal.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of
WINDSOR COUNSELING GROUP,
Petitioner,
— against —
THE PLANNING BOARD OF THE TOWN
OF NEW WINDSOR, NEW YORK,
Respondent.

Index No. 3608-89

CIVIL APPEAL

PRE-ARGUMENT STATEMENT

Appeal taken from Supreme Court

County of Orange

Judge Hon. DONALD N. SILVERMAN, Acting

Date of entry of the ~~judgment~~ order J.S.C.

January 9th, 1990

Notice of appeal filed February 14th, 1990

Full name of parties:

WINDSOR COUNSELING GROUP, Petitioner and Respondent on Appeal

THE PLANNING BOARD OF THE TOWN OF NEW WINDSOR, NEW YORK, Respondent
and Appellant

Changes in parties: NONE

Name of Counsel

Address

Telephone

For Appellant DANIEL S. LUCIA, ESQ.

Temple Hill Rd., R.D.#2 (914) 561-7700
New Windsor, N.Y. 12550

For Respondent ALAN S. LIPMAN, ESQ.

1 Harriman Sq., PO Box 60 (914) 294-7944
Goshen, N.Y. 10924

Method of disposition in trial court:

☐ Judgment after Court-Jury trial

☐ Article 78 proceeding:

☐ Damages granted denied: Amount \$.....

☒ Appeal from order: (short description of order)

denying Respondent's motion to dismiss the petition as a matter of law

Brief description of nature of cause of action or special proceeding

(contract, personal services, sale of goods, etc.; tort-personal injury, automobile, sidewalk accident, etc.; equity, specific performance, injunction, etc.):

This is an Article 78 proceeding which seeks to reverse a decision
adopted by Respondent on April 26, 1989.

State briefly result below:

Hon. Donald N. Silverman, Acting J.S.C. entered an Order denying
Respondent's motion to dismiss the petition.

State whether any related action or proceeding is now pending in any court in this or any other jurisdiction, and if so,
the status thereof:

An Article 78 proceeding entitled WINDSOR COUNSELING GROUP vs. THE
ZONING BOARD OF APPEALS OF THE TOWN OF NEW WINDSOR, NEW YORK, is pending
in this Court, Index No. 6701-86. ZBA decision annulled and matter
remitted to ZBA for findings of fact and determination.

State briefly grounds for seeking reversal, annulment or modification:

Hon. Donald N. Silverman, Acting J.S.C. erred in finding that the
April 26, 1989 Decision of Respondent was sufficiently final to entitle
Petitioner to seek review thereof on this Article 78 proceeding.

Issues proposed to be raised on appeal:

1. Whether the April 26, 1989 Decision of Respondent was a final determination on Petitioner's site plan, where Respondent specifically referred the Petitioner to the ZBA due to inadequate lot width.
2. Whether the failure of the Petitioner to apply to the ZBA, following the referral to the ZBA by the Respondent (which is within the ZBA's jurisdiction pursuant to Zoning Local Law 48-33 A.), constitutes a failure of Petitioner to exhaust its administrative remedies.
3. Whether this Article 78 proceeding by Petitioner was brought in good faith for a legitimate and proper object.

Second Department appeals require the following information:

- ☐ I, attorney for appellant, hereby certify that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript.
- ☐ I have already ordered the transcript to be prepared; OR other arrangements have been made in accordance with the order of Justice dated 19
- ☒ The appeal is taken from an order where there were no minutes taken.

Dated February 14th, 1990
New Windsor, New York

COUNSEL FOR APPELLANT
Daniel S. Lucia

Index No. 3608-89

SUPREME COURT STATE OF N.Y.
COUNTY OF ORANGE

In the Matter of the
Application of

WINDSOR COUNSELING GROUP,
Petitioner,
-against-

THE PLANNING BOARD OF THE
TOWN OF NEW WINDSOR, NEW
YORK,

Respondent.

Pre-Argument Statement

DANIEL S. LUCIA, ESQ.
Attorney(s) for Appellant

Office and Post Office Address
Temple Hill Road, R.D. #2
New Windsor, N.Y. 12550
Telephone (914) 561-7700

Service of a pre-argument statement of which the
within is a copy admitted this
day of 19

Attorney(s) for Respondent

State of New York, County of

ss.:

being duly sworn, deposes and says; that deponent is not
a party to the action, is over 18 years of age and resides
at

19

That on the day of
deponent served the within
on

attorney(s) for

herein, at his office at

during his absence from said office

strike out either (a) or (b)

(a) by then and there leaving a true copy of the same
with

his clerk; partner; person having charge of said office.

(b) and said office being closed, by depositing the same,

enclosed in a sealed wrapper directed to said attorney(s),
in the office letter drop or box.

Sworn to before me this
day of

19

State of New York, County of

ss.:

being duly sworn, deposes and says; that deponent is not
a party to the action, is over 18 years of age and resides
at

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That on the day of
deponent served the within

on

attorney(s) for

at

the address designated by said attorney(s) for that purpose
by depositing same enclosed in a postpaid properly ad-
dressed wrapper, in — a post office — official depository
under the exclusive care and custody of the United States
post office department within New York State.

Sworn to before me this
day of

19

Planning Board

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

.....X

In the Matter of the Application of

NOTICE OF
PETITION

WINDSOR COUNSELING GROUP,

Petitioner,

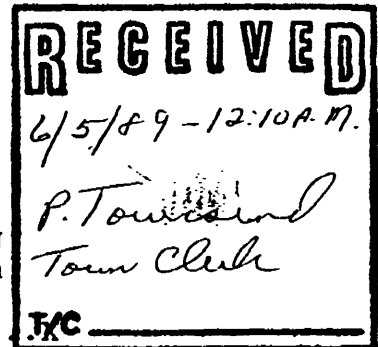
Index No.

- against -

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent.

For a Judgement Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.



S I R S :

PLEASE TAKE NOTICE that upon the petition of Windsor Counseling Group verified the 2nd day of June, 1989, and the affidavit of Alan S. Lipman, sworn to the 2nd day of June, 1989, the undersigned will move this Court at a Special Term thereof to be held at the Courthouse, Orange County Government Center, 255-275 Main Street, Goshen, New York, on the 10th day of July, 1989, at a time and place to be designated by the Justice assigned to this proceeding under the individual assignment system, or as soon thereafter as counsel can be heard for a judgment pursuant to Article 78 of the CPLR, annulling the determination of the respondent Planning Board, dated April 26, 1989, as it applies to the petitioner and the site referred to in the petition and for such other, further and different relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that a verified answer and

answering affidavits, if any, must be served at least five (5) days before the return date of this application and that pursuant to Section 7804 of the Civil Practice Law and Rules you are directed to file with the Clerk of the Court, your answer and answering affidavits, together with a certified transcript of the record of the proceedings to be considered herein.

The basis of venue is the location of Respondent in Orange County.

Dated: Goshen, New York
June 2, 1989

Yours, etc.,
FABRICANT & LIPMAN
Attorneys for Petitioner
Office and P. O. Address
One Harriman Square
P. O. Box 60
Goshen, New York 10924
Tel.: (914) 294-7944

TO: THE PLANNING BOARD OF THE TOWN
OF NEW WINDSOR
555 Union Avenue
New Windsor, New York 12550

\BARBARA\WDSRCNSL.NOP

cc: CARL SCHIEFER
Complete copy given to Joe Rones

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R.D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

August 1, 1989

Mr. Thomas W. Adams
Chief Court Clerk
Supreme Court, Orange County
Government Center
255-275 Main Street
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York
Supreme Court, Orange County
Index No. 3608-89
IAS Justice: Hon. Peter C. Patsalos, J.S.C.
Return Date: July 31, 1989

Dear Mr. Adams:

I enclose herewith Respondent's Sur-Reply Affidavit in connection with a motion to dismiss the petition in the above entitled proceeding, which was returnable before Justice Peter C. Patsalos on July 31, 1989.

Please submit the enclosure to Justice Patsalos on my behalf.

Thank you for your assistance in this matter.

Very truly yours,

Daniel S. Lucia

DSL:rm
Enclosure

cc: Mr. Carl Schiefer
Alan S. Lipman, Esq.

.....X
In the Matter of the Application

of

**SUR-REPLY
AFFIDAVIT**

- against -

THE PLANNING BOARD OF THE TOWN OF,
NEW WINDSOR, NEW YORK,

Name of Assigned
Judge: Hon. Peter
C. Patsalos

Respondent.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989..

.....X

[illegible]

ALAN S. LIPMAN, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of New York, maintaining offices at One Harriman Square, Goshen, New York.

2. I am the attorney for the petitioner in the above entitled proceeding. I am fully familiar with the facts and circumstances herein.

3. I make this sur-reply affidavit in response to new matters raised by Mr. Lucia in his reply affidavit, sworn to on July 28, 1989.

4. At the outset, let me say that the caption in my affidavit, sworn to on July 25, 1989, was incorrect and is a reflection of one of the pitfalls of word processing within a law

office. Earlier in the proceedings before the respondent, I had elected to review its March 8, 1989 decision, prepared some papers in that direction and then abandoned the idea. Apparently, in the process of preparing my affidavit of July 25, 1989, the caption was erroneously picked up from those earlier (never used) papers. I apologize to the court and to Mr. Lucia for that error. There is no effort here to review the March 8, 1989 determination of the respondent.

5. Mr. Lucia suggests that the deficiency in lot width was disclosed to the applicant early in the proceedings by the Planning Board Engineer, pursuant to his duties under §48-19 C.(3) of the Code. Petitioner does not argue that the issue was concealed. Rather the petitioner argues that the issue is pretended and that by virtue of the provisions of §48-25 of the New Windsor Zoning Code, petitioner's premises are exempt from the requirement of lot width, which it's premises do not satisfy. Exactly as the section had to have been recognized in the application of Nugent.

6. A nonconforming building is (under Code §48-25), by definition, "any building which contains a use permitted in the district but which does not conform with the district regulations for lot . . . width". (emphasis supplied). Normal maintenance, repair, structural alterations, etc., of a nonconforming building is permitted, provided the same does not increase the degree or create any new nonconformity. There can be no issue that petitioner's premises constitute a "nonconforming building" and as such, it is exempt from compliance with the current lot width

requirements.

7. The difference between the respondent's perspective in this matter and my own is that I believe that the language of the ordinance is crystal clear and no variance is needed. The respondent simply and purposely chooses to ignore the provisions of §48-25 of the Code. This was not only true in the proceedings before the respondent but it is true in these proceedings before the court.

8. When Mr. Lucia suggests that petitioner's application only addressed the issue of the lot width deficiency on the fourth occasion that this matter was on the agenda for discussion, he may be correct, but so what? He quotes my response to the issue (on January 25, 1989) on page 5 of his affidavit sworn to July 28, 1989. I advised the Board then, that we had proposed a permitted use and that we were not in a position to provide any greater lot width. What the record does not disclose is a dialogue that took place between Mr. Rones and myself at that meeting (January 25, 1988) at which time I exhibited Code §48-25 to him and argued that section was sufficient to eliminate any issue of lot width deficiency. There was and is no deadline for the respondent to recognize the applicability of Code §48-25 to the petitioner's application. Indeed it's not too late even for Mr. Lucia to recognize the applicability and significance of that section.

9. Mr. Lucia is incorrect when he suggests that the Windsor Counseling application was on the agenda of the Planning Board on March 8, 1989 and on April 26, 1989. This simply is not

so. A copy of the agenda for each of those evenings, is annexed hereto as Exhibits "A" and "B", respectively. On those occasions this matter was discussed and determinations made by the respondent without notice to the petitioner or even an opportunity to be heard.

10. With respect to the action taken by the respondent on April 26, 1989, the entire scenario from the motion that was made through the vote and discussion that followed, is set forth on pages 3 and 4 of my affidavit of July 25, 1989. The legal surplusage, as Mr. Lucia characterizes the findings by the respondent and the explanation for its action and decision, is of the essence. The denial took place for four reasons, none of which justified the action taken. Of course the respondent should not have denied this application without conducting a public hearing, - but to suggest that the condition of the private road, the parking requirements and the fictitious occupant, were not part of the reasons for the denial, is absolutely ludicrous in the face of the respondent's own minutes. To argue that the denial is appropriate because three of the reasons given were inappropriate prior to a public hearing, is to venture from the ludicrous to the sublime.

11. Nor can the action taken by the respondent be excused because the poor board members are laymen. They are represented at each meeting by competent counsel and competent engineers.

12. As I indicated on July 25, 1989 (and here), there were no less than four (4) reasons for the denial, but one reason

or four, a denial is no less a denial and no less permanent or final. Whatever the respondent's usual procedure, it must satisfy the requirements of law. There are no provisions of law by which a Planning Board may refer matters to the Zoning Board of Appeals or do anything but approve or deny an application for site plan approval. This is statutory, as is review of any denial by the Supreme Court.



Alan S. Lipman

Sworn to before me this
31st day of July, 1989


Notary Public

BARBARA LEIN
Notary Public, State of New York
No. 4914949
Qualified in Orange County
Term Expires Dec. 21, 1992

\BARBARA\WDSR-ASL.REP

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK

3/3/89
10:00 A.M.
E. Chastoff, Deputy



1763

NOTE: MARCH 8TH MEETING TO BE HELD IN THE TOWN OFFICE
SENIOR CITIZEN BUILDING TOWN OF NEW WINDSOR

NEW WINDSOR PLANNING BOARD MEETING
TOWN HALL
WEDNESDAY, MARCH 8, 1989 - 7:30 P.M.

TENTATIVE AGENDA

Call to Order
Roll Call
Minutes

1. Scognamiglio, J. - Minor Subdivision - Toleman Rd.
(Washburn) (88-9)
2. A & J Washrooms - Site Plan - Temple Hill Rd.
(Grevas) (88-23)
3. Lee Myles Trans. - Site Plan - Rt. 32 (Shaw) (88-32)
4. Oakwood Comm. Ctr. - Site Plan - Rt. 94 -
(Tectonic) (88-34)
5. Cohen, Michael - Site Plan - Rt. 32 (Cuomo) (88-55)
6. Sladewski, Edward - Subdivision - Lake Road
(Dragan) (88-56)
7. Kumstar W/Sperry - Lot Line Change - Temple Hill Rd
(Harp) (88-57)
8. Joe & Lorenzo Restaurant - Site Plan - Rt. 32
(Cuomo) (88-62)

Pre-Submission Conference: Columbian Art Works - Site Plan (89-2)

Correspondence
Discussion
Adjournment

(NEXT MEETING MARCH 22, 1989)

Fax Operator
25 Cents
Due

*Received 4/18/89 - 11:15 AM
E. Chastoff, Dep.*

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK



1763

NEW WINDSOR PLANNING BOARD MEETING
TOWN HALL
WEDNESDAY, APRIL 26, 1989 - 7:30 P.M.

TENTATIVE AGENDA

Call to Order
Roll Call
Minutes

1. Windsor Square Subdivision - (86-58) Rt. 32 (Grevas & Hildreth)
2. Medalion Farms Subdivision - (88-72) Toleman Road (Grevas & Hildreth)
- * 3. Hogan's Realty Site Plan - (88-51) Rt. 207 (Grevas & Hildreth)
- * 4. Comic Strip Club Site Plan - (89-7) Rt. 9W (Grevas & Hildreth)
5. Washington Green Site Plan - (89-5) Rt. 32 (Discussion)
- * 6. Kassa Subdivision - (88-40) Feitsma Ln. (Cuomo)
7. Sabins Subdivision - (89-3) Toleman Rd. (Grevas & Hildreth)
8. Federal Block Amended Site Plan - (89-6) Walsh Rd. (Rosenblum)
9. Varghese Subdivision - (89-12) Station Rd. (Tectonic)
10. Sheafe Subdivision - (89-13) Rt. 207 (Lanc & Tully)

Correspondence

Discussion: Wellback Properties
Lester Clark

Adjournment

* ZBA REFERRAL ONLY

NEXT MEETING MAY 10, 1989

*Fax Operator
25 cents
Duel*

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

July 7, 1989

Mr. Thomas W. Adams
Chief Court Clerk
Supreme Court, Orange County
Government Center
255-275 Main Street
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor
Supreme Court, Orange County
Index No. 3608-89
IAS Justice: Hon. Peter C. Patsalos, J.S.C.
Return Date: July 17, 1989

Dear Mr. Adams:

In connection with a motion to dismiss the petition in
the above entitled proceeding, I enclose herewith the following:

Note of Issue on Motion
Notice of Motion
Affidavit
Certified Transcript of the Record of the Proceedings
under Consideration.

This matter was originally made returnable on July 10,
1989. Alan S. Lipman, Esq., the attorney for the petitioner, and
I agreed to adjourn the return date for one week, to July 17, 1989.

I would appreciate it if you would submit the enclosures
on my behalf to Justice Peter C. Patsalos on July 17, 1989.

I also enclose a stamped, self-addressed envelope for
return of the Court's decision to me.

Mr. Thomas W. Adams

Page Two

July 7, 1989

Thank you for your assistance in this matter.

Very truly yours,

Daniel S. Lucia

DSL:rm
Enclosures

cc: Mr. Carl Schiefer
Alan S. Lipman, Esq.

C

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P

Y

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE**

In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

-against-

**THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,**

Respondent.

Index No. 3608-89

**IAS Justice: HON.
PETER C. PATSALOS,
J.S.C.**

**NOTE OF ISSUE
ON MOTION**

**For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.**

**NOTICE OF MOTION RETURNABLE: July 17, 1989
9:00 A.M.
County Court House
Orange County
Goshen, New York 10924**

**PURPOSE: For an Order dismissing the petition
herein as a matter of law**

**RESPONDENT-MOVANT'S ATTORNEY: DANIEL S. LUCIA, ESQ.
Attorney for Respondent
Office & P.O. Address
Temple Hill Road
R. D. #2
New Windsor, New York 12550
Telephone No. (914) 561-7700**

**PETITIONER'S ATTORNEYS: FABRICANT & LIPMAN, ESQS.
Attorneys for Petitioner
Office & P.O. Address
One Harriman Square
P. O. Box 60
Goshen, New York 10924**

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE**

In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

-against-

**THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,**

Respondent.

Index No. 3608-89

**IAS Justice: HON.
PETER C. PATSALOS,
J.S.C.**

NOTICE OF MOTION

**For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.**

SIRS:

**PLEASE TAKE NOTICE, that upon the petition herein and
the attachments thereto, upon the certified transcript of the
record of the proceedings under consideration, and upon the
annexed affidavit of Daniel S. Lucia, Esq., sworn to on July 7,
1989, a motion pursuant to CPLR 7804 (f) will be made at an
IAS Term of this Court, to be held at the Courthouse thereof,
located at Goshen, Orange County, New York, upon the return day
of this proceeding, on the 17th day of July, 1989, at 9:00 o'clock
A.M. in the forenoon of that day, or as soon thereafter as counsel
can be heard, for an Order dismissing the petition herein as a
matter of law on the ground that said petition fails to state**

facts sufficient to entitle the petitioner to the relief sought therein, to wit, (1) petitioner seeks review of a non-final determination, (2) petitioner has not exhausted his administrative remedies, and (3) the application does not appear to be made in good faith for a legitimate and proper object, and for such other, further and different relief as to this Court may seem just, proper and equitable.

Dated: New Windsor, New York
July 7, 1989

Yours, etc.

DANIEL S. LUCIA, ESQ.
Attorney for Respondent
Office & P.O. Address
Temple Hill Road
R. D. #2
New Windsor, New York 12550
Telephone No. (914) 561-7700

TO: FABRICANT & LIPMAN, ESQS.
Attorneys for Petitioner
One Harriman Square
P. O. Box 60
Goshen, New York 10924

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

-against-

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent.

Index No. 3608-89

IAS Justice: HON.
PETER C. PATSALOS,
J.S.C.

AFFIDAVIT

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.

STATE OF NEW YORK

ss:

COUNTY OF ORANGE

DANIEL S. LUCIA, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice
in the Courts of the State of New York, and I am the attorney for
the respondent in the above entitled proceeding.

2. I make this affidavit in support of the respondent's
motion, pursuant to CPLR 7804 (f), to dismiss the petition as a
matter of law on the ground that said petition fails to state facts
sufficient to entitle the petitioner to the relief sought therein,
to wit, (1) petitioner seeks review of a non-final determination,
(2) petitioner has not exhausted his administrative remedies, and

(3) the application does not appear to be made in good faith for a legitimate and proper object.

3. Notwithstanding the volume of material attached to the petition, and the inflammatory allegations of obstruction and unequal treatment, these objections in point of law cut to the heart of the petition and, I respectfully submit, require dismissal thereof.

NON-FINAL DETERMINATION

4. The April 26, 1989 decision of the respondent, which is the subject of this proceeding, was the defeat of a motion to approve the petitioner's site plan. As the minutes of the April 26, 1989 meeting clearly indicate, the defeat of this motion was for the purpose of referring the matter to the Zoning Board of Appeals (hereinafter "ZBA") due to inadequate lot width. Clearly this decision is not a final determination of the petitioner's application for site plan approval. It is an advisory determination that, since the site plan shows a lot with inadequate lot width, a variance might be necessary and thus a referral is made to the ZBA. In the normal course of events, the ZBA will pass upon the lot width issue, either on a variance application or in connection with an interpretation. If the ZBA grants the variance, or makes an interpretation that a variance

is unnecessary, the matter then returns to the respondent for a public hearing, if the respondent in its discretion determines that a public hearing is required (it was in this matter) and for further review of the site plan application. Thus the April 26, 1989 decision could not have been final since it was not, and did not purport to be, a final determination on the site plan application. Alternatively, if the ZBA made an interpretation that a variance was necessary, and/or upon application therefore, denied the variance, then this would constitute a final determination reviewable by an Article 78 proceeding.

5. In his affidavit attached to the petition, Alan S. Lipman, Esq. inadvertently lends support to the argument that the April 26, 1989 decision was not a final determination. Mr. Lipman's affidavit (at paragraph 31, page 11) states that

Apparently, in New Windsor a motion to approve which is not carried is treated as a denial. In my view, the defeat of such a motion constitutes no action and no denial has taken place. (emphasis in original)

If there has been no action and no denial, there surely cannot have been a final determination reviewable by an Article 78 proceeding.

6. The Town Board of New Windsor, pursuant to Town Law 274-a, has authorized respondent to review and approve site plans. This is set forth in Zoning Local Law 48-19, a copy of which is attached hereto as Exhibit "A". Within these parameters, the

respondent is granted certain discretion to review and approve site plans. The respondent has not yet exercised its discretion on this application. The respondent has adopted a motion at its January 25, 1989 meeting to schedule this matter for a public hearing. Said public hearing has not been held. Thus there has not been, and could not be, any final determination on the petitioner's application for site plan approval.

7. One of the prayers for relief in the affidavit of Alan S. Lipman, Esq. (at WHEREFORE clause, page 23) is ". . . that the respondent be directed to grant site plan approval to the application of the petitioner . . . ". I respectfully submit that such relief is unavailable to the petitioner at this time since there has been no public hearing and the respondent has not yet had the opportunity to exercise its discretion on this application (and the ZBA has not yet had the opportunity to decide any variance and/or interpretation application). Granting such relief would bypass entirely these intermediate steps which are necessary prerequisites to any final determination.

8. It is well established law that the matter sought to be reviewed in an Article 78 proceeding must be a determination which winds up the proceeding. There must remain no further act or determination necessary to conclude the rights of the parties. The instant proceeding fails to meet these tests. The respondent,

and the ZBA, must be afforded the opportunity to make a final determination before this matter will become subject to judicial review on an Article 78 proceeding.

EXHAUSTION OF REMEDIES

9. The stated purpose of the April 26, 1989 decision of the respondent was to refer the petitioner's application to the ZBA due to inadequate lot width. The ZBA, pursuant to Town Law 267 and Zoning Local Law 48-33, a copy of which is attached hereto as Exhibit "B", is empowered to hear and decide such referrals. The applicant has the option of applying for an interpretation and/or a variance. The petitioner has declined to apply to the ZBA and instead brings this Article 78 proceeding.

10. An Article 78 proceeding is one in the nature of certiorari to review the determination of an inferior tribunal acting in a judicial or quasi-judicial character. It is well settled law that certiorari will not be granted when the party seeking it has another adequate remedy, at least until the other remedy has been exhausted. In the instant proceeding, the petitioner has an adequate remedy in applying to the ZBA for an interpretation and/or a variance. The petitioner has declined to pursue this remedy and instead brings this Article 78 proceeding.

11. The ZBA has the power to grant the petitioner full

and adequate relief on the inadequate lot width issue. The ZBA possesses original jurisdiction on this issue and the applicant must exhaust this remedy before resorting to an Article 78 proceeding.

GOOD FAITH

12. Granting the relief sought in an Article 78 proceeding is a matter resting in the sound discretion of the Court. Thus relief should be denied if the application is not made in good faith for a legitimate and proper object. Relief should be denied if the petition is motivated by an ulterior motive.

13. The ulterior motive here is that the petitioner does not want to apply for relief from the ZBA. Mr. Lipman is quite forthright on that issue in his affidavit attached to the petition (paragraph 56, at page 22):

On the basis of the last proceeding before the Zoning Board of Appeals (in August of 1986), the petitioner is not anxious to permit that agency to sit in judgment upon the pretended need for a variance. The Zoning Board of Appeals is undoubtedly still stinging from the resounding and deserving rebuff that it received at the hands of the Honorable Peter C. Patsalos (Exhibit "H").

While the petitioner may not be happy with the state of affairs in which it finds itself, it cannot selectively bypass the necessary remedy available to it through the ZBA.

15. Thus, although the petitioner may be loathe to bring the inadequate lot width issue before the ZBA, that is exactly the step which it will have to take. It would be contrary to public policy and to the entire scheme of zoning and land use control in the State of New York to allow petitioner to bypass the ZBA.

Daniel S. Lucia

Notary Public

PATRICIA B. AMERSON (Dunn)
NOTARY PUBLIC, State of New York
Qualified in Orange County
Reg. No. 4514000
Commission Expires December 22, 2009

ing district in which the property is located. No such sign shall be permitted to remain in one subdivision or in one unit of a subdivision for the purpose of advertising the sale of lots or structures in another subdivision or another unit within the same subdivision.

V. Signs for special events. Temporary signs may be erected as participation in public parades, public events or public celebrations for a period not to exceed ten (10) days; provided however, that the erection of such sign shall be approved by the Zoning Inspector and shall be in conformance with permitted accessory signs listed in the Table of Use Regulations and Table of Bulk Regulations applicable to the zone in which located. [Added 8-21-85 by L.L. No. 7-1985]

W. Special exceptions. The intent of this section is to allow certain provisions of this local law to be modified, where such modification will encourage excellence in the planning and design of signs. Nothing in this section, however, is intended to permit the erection or maintenance of signs which are prohibited by this local law. In the event that any party wishes to construct or install a sign or signs other than as permitted in this local law, that party shall be entitled to a hearing before the Zoning Board of Appeals. Governing rules for appeals and variances required by the Zoning Board of Appeals shall apply.

§ 48-19. Site development plan review.

In all cases where this local law requires approval of site plans, no building permit shall be issued by the Zoning Inspector except upon authorization of and in conformity with the plans approved by the Planning Board.

A. Objectives. In considering and acting upon site plans, the Board shall take into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the residents of the proposed development and the immediate neighborhood in particular and may prescribe such appropriate conditions and safeguards as may be required in order that the result of its

action shall, to the maximum extent possible, further the expressed intent of this local law and the accomplishment of the following objectives in particular:

- (1) **Traffic access.** That all proposed traffic access and ways are adequate but not excessive in number; adequate in width, grade, alignment and visibility; not located too near street corners or other places of public assembly; and other similar safety considerations.
- (2) **Circulation and parking.** That adequate off-street parking and loading spaces are provided to prevent the parking on public streets of vehicles of any persons connected with or visiting the use and that the interior circulation system is adequate to provide safe accessibility to all required off-street parking lots.
- (3) **Landscaping and screening.** That all playground, parking and service areas are reasonably screened at all seasons of the year from the view of adjacent residential lots and streets and that the general landscaping of the site is in character with that generally prevailing in the neighborhood. Existing trees over eight (8) inches in diameter measured three (3) feet above the base of the trunk shall be retained to the maximum extent possible.

B. Effect of site plan approval.

- (1) No building permit shall be issued for any structure covered by this section until an approved site plan or an approved amendment of any such plan has been secured by the applicant from the Planning Board and presented to the Zoning Inspector.
- (2) No certificate of occupancy shall be issued for any structure or use of land covered by this section unless the structure is completed or the land is developed or used in accordance with an approved site plan or an approved amendment of any such plan.

C. Procedure.

- (1) **Presubmission conference.** Prior to the submission of a site plan, the applicant shall meet in person with the Board. The purpose of such conference shall be to discuss proposed uses or development in order to determine which of the site plan elements listed in § 48-19D shall be submitted to the Board in order for said Board to determine conformity with the provisions and intent of this local law.
- (2) **Within six (6) months following the presubmission conference, the site plan and application materials, together with the required fee from the Standard Schedule of Fees of the Town of New Windsor, shall be submitted to the Secretary of the Planning Board in triplicate, and copies of all materials shall be distributed to the Zoning Inspector and Planning Board Engineer. Materials must be submitted in proper form at least fifteen (15) days prior to the Board meeting at which the plan is to be reviewed.**
- (3) **The Zoning Inspector and Planning Board Engineer shall report to the Planning Board whether the plan**

(Cont'd on page 4829)

meets the requirements of all zoning law provisions and shall also make recommendations for modifications to the plan in order that the plan or amendment thereof shall be consistent with these regulations.

- (4) The Planning Board may, on its own motion, have alternative site plans or parking studies prepared where the proposed plan does not meet the requirements or standards of these regulations. The Planning Board may retain the services of independent consultants or specialists to prepare the alternative plans or studies, or may authorize the Planning Board Engineer to prepare such plans. Any expenses incurred in the preparation of alternative plans shall be fully assignable to the applicants prior to final approval of the site plan.
- (5) A public hearing for site plan approval may be required by the Planning Board at its discretion. Upon receipt of such documents in proper form, the Planning Board shall fix the date for a public hearing on the proposed use. The applicant shall send notice of the public hearing stating the date, place and substance of the hearing to all owners of property abutting the proposed use and directly across any adjoining street, as the names of said owners appear on the last complete assessment roll of the town. Such notice shall be sent by mail, return receipt requested; and a list of the owners to whom notice has been sent, together with certified mail receipts, shall be filed with the Planning Board at least ten (10) days prior to the date of the public hearing. Not less than ten (10) days prior to the public hearing, notice of the same shall be published at the expense of the applicant in the official newspaper.
- (6) The Board shall act to approve or disapprove any such site plan within ninety (90) days after the meeting at which the same is submitted. Failure to act within ninety (90) days shall be deemed approval. Disap-

proval shall include written findings upon any site plan element found contrary to the provisions or intent of this local law.

- (7) Amendments to a site plan shall be acted upon in the same manner as the approval of the original plan.
- (8) Waiver of required information. Upon findings by the Planning Board that, due to special conditions peculiar to a site, certain of the information normally required as part of the site plan is inappropriate or unnecessary or that strict compliance with said requirements may cause extraordinary and unnecessary hardships, the Board may vary or waive the provision of such information, provided that such variance or waiver will not have detrimental effects on the public health, safety or general welfare or have the effect of nullifying the intent and purpose of the site plan submission, Master Plan or this local law.
- (9) Application for building permit. Within one (1) year of the date of site approval by the Planning Board, the applicant shall apply for a building permit or the approval of the site plan shall expire. However, the Town Board may extend the time for application for a building permit a period not to exceed one (1) additional year if, in its opinion, such action is warranted by the particular circumstances thereof.
- (10) Unless work is commenced and diligently prosecuted within one (1) year, or within such time expressly stated by the Planning Board at the date of granting approval, said approval shall become null and void.
- (11) The Planning Board may require, as a condition of approval, that a performance bond or maintenance bond, or both, be posted with the town in a manner set forth in the Town of New Windsor Subdivision Regulations⁵ for subdivisions to guarantee the installation of key site improvements and the upkeep of landscaping, screening and safety devices, and to

⁵ Editor's Note: See Appendix, Part II, Subdivision Regulations.

ensure the general cleanliness and proper housekeeping of the grounds and environs of the area approved pursuant to these regulations. Such performance bonds shall be valid for a period not to exceed two (2) years from the date of the building permit, nor may maintenance bonds exceed a period of three (3) years from the date of the certificate of occupancy of the completed site plan.

D. [Amended 8-21-85 by L.L. No. 7—1985] Site plan elements. The applicant shall cause a site plan map to be prepared by a professional engineer, surveyor, architect or other design professional authorized under the New York State Education Law to prepare such a plan. The site plan shall include those of the elements listed herein which are appropriate to the proposed development or use as indicated by the Board in the presubmission conference. During the presubmission conference, the Board shall consider the necessity of the preparation of separate plan sheets for certain elements of the plan, such as a general layout sheet showing existing and proposed uses on the site; a site grading and drainage sheet showing existing and proposed contours, as well as existing and proposed storm drainage improvements; and a lighting and landscaping sheet showing existing and proposed lighting sources and landscaping elements.

(1) Legal data.

- (a) Section, block and lot numbers of the property, taken from the latest tax records.
- (b) Name(s) and address(es) of the owner(s) of record.
- (c) Name and address of person, firm or organization preparing the map.
- (d) Date, North point and written and graphic scales.
- (e) Sufficient description or information to define precisely the boundaries of the property. All distances shall be in feet and tenths of a foot. All angles shall be given to the nearest ten (10) seconds or closer. The error of closure shall not exceed one (1) in ten thousand (10,000).

- (f) Locations, names and existing widths of adjacent streets and curblines.
 - (g) Locations and owners of all adjoining lands as shown on the latest tax records.
 - (h) Location, width and purpose of all existing and proposed easements, setbacks, reservations and areas dedicated to public use within or adjoining the property.
 - (i) Complete outline of existing deed restrictions or covenants applying to the property.
 - (j) Existing zoning, school and special district boundaries.
 - (k) An area location map, at a scale of no smaller than one (1) inch equals one thousand (1,000) feet, showing adjoining public roads, railroads, major watercourses, schools, firehouses and any other landmarks to establish the location of the property.
 - (l) A table showing the relationship between the existing and proposed uses of the property and the bulk requirements for the intended use in the zone in which the property is situated in relation to the bulk requirements.
- (2) Natural features.
- (a) Existing contours with intervals of five (5) feet or less, referred to a datum satisfactory to the Board.
 - (b) Approximate boundaries of any areas subject to flooding or stormwater overflows.
 - (c) Location of existing watercourses, marshes, wooded areas, rock outcrops, isolated trees with a diameter of eight (8) inches or more measured three (3) feet above the base of the trunk, and other significant existing features.

(3) Existing structures and utilities.

- (a) Location of uses and outlines of structures drawn to scale and within one hundred (100) feet of the lot line.
- (b) Paved areas, sidewalks and vehicular access between the site and public streets.
- (c) Locations, dimensions, grades and flow direction of existing sewers, culverts and water lines, as well as other underground and aboveground utilities within and adjacent to the property.
- (d) Other existing developments, including fences, landscaping and screening.

(4) Proposed development.

- (a) Location of proposed buildings or structural improvements.
- (b) Location and design of all uses not requiring structures, such as off-street parking and loading areas.
- (c) Location, direction, power and time of use for any proposed outdoor lighting or public address systems.
- (d) Location, plans, elevations and details of any outdoor signs.
- (e) Location and arrangement of proposed means of access, ingress and egress, including sidewalks, driveways or other paved areas, and profiles indicating grading and cross sections showing the width of the roadway, the location and width of sidewalks and the location and size of water and sewer lines.
- (f) Proposed grading, screening and other landscaping, including types and locations of proposed street trees.

- (g) Location of all proposed water lines, valves and hydrants, and of all sewer lines or alternate means of water supply and sewage disposal and treatment.
 - (h) Outline of any proposed easements, deed restrictions or covenants.
 - (i) Contemplated public improvements on or adjoining the property.
 - (j) If the site plan only indicates a first stage, a supplementary plan shall indicate ultimate development.
- (5) Information concerning the provisions of solar access to the building or buildings to be constructed on the site in accordance with the following criteria:
- (a) Site selection. In order to maximize solar access, the development should place highest densities on south-facing slopes. Lower densities should be sited on north-facing slopes.
 - (b) Street layout. Streets should be oriented on an east/west axis to the greatest possible extent. Orientation can vary up to ten degrees (10°) to the northwest and twenty-five degrees (25°) to the southwest.
 - (c) Lot layout. Lots should be oriented north and south to the greatest extent possible.
 - (d) Building siting.
 - [1] The long axis of buildings on the site should be oriented east and west to the greatest possible extent. Building orientation may vary up to ten degrees (10°) to the northwest and twenty-five degrees (25°) to the southwest of the east/west axis.
 - [2] Buildings should be sited as close to the north lot line or lines as possible to increase yard space to the south for better owner control of shading.

- [3] Adjustments to front, side and rear lot lines, acceptable to the Planning Board, should be used when good solar access is not possible for single-family detached units on a particular site due to topography, property orientation or other salient factors.
- [4] Tall buildings should be sited to the north of shorter buildings. Tall buildings shall be buffered from adjacent developments in the same manner.
- (e) In selecting trees for landscaping, the mature height and canopy size should be considered to prevent shading of south walls of proposed buildings.
- (f) Aesthetics. If solar access systems are proposed for new construction, the applicant shall submit elevation drawings indicating the location, size and type of units proposed. The location, plan and elevation of all proposed round-mounted solar collectors shall also be submitted for review. In all cases, efforts shall be made to retain the existing aesthetic character of the neighborhood while providing the best possible location for such collector units on the site.
- (6) Any other information deemed by the Board necessary to attain conformity of the site plan with the intent and regulations of this local law.

§ 48-20. Landscaping and environmental control.

- A. The use of living plant material as an adjunct to all uses subject to these regulations shall be mandatory. Landscape materials shall be utilized in a positive manner in all developments for architectural elements, space articulation, screening, privacy control, erosion control, acoustical control, atmospheric purification, traffic control,

§ 48-33. Powers and duties.

The Board of Appeals shall have all the powers and duties prescribed by law and by this local law, which are more particularly specified as follows, provided that none of the following provisions shall be deemed to limit any power of the Board that is conferred by law:

A. Interpretation. On appeal from an order, requirement, decision or determination made by an administrative official, or on request by an official, board or agency of the town, to decide any of the following questions:

- (1) Determination of the meaning of any portion of the text of this local law or of any condition or requirement specified or made under the provisions of this local law.
- (2) Determination of the exact location of any district boundary shown on the Zoning Map.

B. Variances.

- (1) To authorize, upon appeal in specific cases, such variance from the terms of this local law as will not be contrary to the public interest where, owing to exceptional and extraordinary circumstances, there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this local law, subject to terms and conditions to be fixed by the Board of Appeals; provided, however, that no such variance shall be granted unless said Board finds:
 - (a) That there are physical conditions, such as in the case of an exceptionally irregular, narrow, shallow or steep lot, fully described in the findings of said Board, applying to the land or building for which the variance is sought, which conditions are peculiar to such land or building and have not resulted from any act of the applicant or any prior owner.
 - (b) That, for reasons fully set forth in the findings of said Board, the aforesaid circumstances or

conditions are such that the strict application of the provisions of this local law would deprive the applicant of the reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by said Board is the minimum variance that will accomplish this purpose.

- (c) That the granting of the variance under such conditions as said Board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this local law, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.
- (2) The needs or desires of a particular owner or tenant or of a particular prospective owner or tenant shall not, either alone or in conjunction with other factors, afford any basis for the granting of a variance. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto.
- (3) Where said Board finds the zoning classification of a particular property to be conducive to the deprivation of the reasonable use of the land or buildings and where said Board finds the same condition to apply generally to other lands or buildings in the same neighborhood or zoning district, said Board shall call this condition to the attention of the Planning Board and Town Board.
- (4) In all cases where the Board of Appeals grants a variance from the strict application of the requirements of this local law, it shall be the duty of such Board to attach such conditions and safeguards as may be required so that the result of its action may be as nearly as possible in accordance with the spirit and intent of this local law.

C. Special permits.

- (1) In addition to such powers as may be conferred on it by statute, the Board of Appeals shall have the power, after public notice and hearing, and upon application, to issue special permits for any of the uses specified in Article III, Use Regulations, as requiring such permits in the particular district. In issuing such special permit, the Board shall take into consideration the public health, safety and welfare and the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular, and may prescribe such appropriate conditions and safeguards as may be required in order that the result of its action shall, to the maximum extent possible, further the expressed intent of this local law and the accomplishment of the following objectives:
 - (a) That all proposed structures, equipment and material shall be readily accessible to fire and police protection.
 - (b) That the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
 - (c) That, in addition to the above, in the case of any use located in or directly adjacent to a residential district:
 - [1] The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous

with, said residential district nor conflict with the normal traffic of the neighborhood.

- [2] The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

- (2) In issuing a special permit, the Board may require any walls, fences or landscaping which it deems necessary to protect the value of adjacent properties or to prevent any hindering of the appropriate development of adjacent land.
- (3) Each application for a special permit shall be accompanied by a proposed plan showing the size and location of the lot and the location of all buildings and proposed facilities, including access drives, parking areas and all streets within two hundred (200) feet of the lot.
- (4) Any use for which a special permit may be granted shall be deemed to be a conforming use in the district in which such use is located, provided that such permit shall affect only the lot or portion thereof for which such permit shall have been granted.
- (5) The Board of Appeals may require that special permits be periodically renewed. Such renewal shall be granted following due public notice and hearing and may be withheld only upon a determination by the Board to the effect that such conditions as may have been prescribed by the Board in conjunction with the issuance of the original permit have not been or are no longer being complied with.

D. Temporary certificate of occupancy.

- (1) To authorize, upon denial by the Zoning Inspector of a certificate of occupancy, the issuance of a temporary

certificate of occupancy by the Zoning Inspector for a period not to exceed ninety (90) days, for the completion of any alterations that are required under the provision of any law or ordinance or for the completion of a part of an uncompleted building, provided that the Board finds that:

- (a) The denial of a certificate of occupancy prior to completion of said alterations or of the building would cause unnecessary hardship.
 - (b) The safety of the occupants of the building and of adjacent buildings and land would be adequately assured under such terms and conditions as said Board may prescribe.
- (2) Such temporary certificate shall not be construed as in any way altering the respective rights, duties or obligations of the owner or of the town respective to the use or occupancy of the land or building, or any other matter covered by this local law.

§ 48-34. Procedures.

The powers and duties of the Board of Appeals shall be exercised in accordance with the following procedures:

- A. The Board of Appeals shall not decide upon any appeal for a variance, special permit or interpretation of this local law without first holding a public hearing, notice of which hearing and of the substance of the appeal or application shall be given by publication in the official newspaper of the town at least ten (10) days before the date of such hearing. In addition to such published notice, the Board of Appeals shall cause such notice to be mailed at least ten (10) days before the hearing to all owners of property which lie within five hundred (500) feet of any lot line of the property for which relief is sought and to such other owners as the Board of Appeals may deem advisable. Such notice shall be sent by registered or certified mail, return receipt requested, and the Board may inspect such receipt to assure proper notification, provided that due notice shall

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

-against-

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent.

Index No. 3608-89

IAS Justice: HON.
DONALD N. SILVERMAN,
Acting J.S.C.

RESPONDENT'S
FOURTH SUR-REPLY
AFFIDAVIT

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.

STATE OF NEW YORK

ss:

COUNTY OF ORANGE

DANIEL S. LUCIA, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice
in the Courts of the State of New York, and I am the attorney for
the respondent in the above entitled proceeding.

2. I make this affidavit in sur-reply to the (fourth)
sur-reply affidavit of Alan S. Lipman, Esq., sworn to on
September 19, 1989, and in further support of respondent's motion,
pursuant to CPLR 7804 (f), to dismiss the petition as a matter of
law on the ground that said petition fails to state facts sufficient

to entitle the petitioner to the relief sought therein, to wit,
(1) petitioner seeks review of a non-final determination,
(2) petitioner has not exhausted his administrative remedies, and
(3) the application does not appear to be made in good faith for
a legitimate and proper object.

3. Mr. Lipman continues to argue that he does not believe that the respondent has the power to refer a matter to the Zoning Board of Appeals (hereinafter "ZBA"). I responded to this argument in my Reply Affidavit, sworn to on July 28, 1989, in paragraphs 24-27, at pages 12-13. In summary, Town Law 267 (2) provides that the ZBA

. . . shall also hear and decide all matters
referred to it or upon which it is required to
pass under any such (zoning) ordinance.
(emphasis supplied)

4. That section of the state enabling legislation is unambiguous. It is implemented by New Windsor's Zoning Local Law 48-33. A. (1) which empowers the ZBA

. . . on request by (a) . . . board . . . of the town,
to decide any of the following questions:

- (1) Determination of the meaning of any portion of the text of this local law or of any condition or requirement specified or made under the provisions of this local law.*

*The full text of Zoning Local Law 48-33 is attached to deponent's affidavit in support of motion, sworn to July 7, 1989, as Exhibit "B".

5. Given this authorization, by both state statute and local ordinance, the respondent clearly had the power to refer the inadequate lot width issue to the ZBA. The site plan submitted by the petitioner to the respondent showed a lot width of 85 feet. The minimum lot width requirement (in both the R-4 and NC zones) is 100 feet. The respondent thus acted properly, and within its powers, when it denied site plan approval to the petitioner and referred the petitioner to the ZBA. The respondent's minutes of the April 26, 1989 meeting bear this out:

Mr. VanLeeuwen: I make a motion that we deny the site plan.

Mr. Rones: And then after you have denied the site plan, refer them to the Zoning Board of Appeals.

Mr. VanLeeuwen: Due to inadequate lot width and he made --

Mr. Rones: I believe it is just due to inadequate lot width.

And that is exactly what the respondent did on April 26, 1989.

A motion to approve the petitioner's site plan was defeated unanimously and the matter was referred to the ZBA.

6. The appropriateness of the respondent's referral of the inadequate lot width issue to the ZBA is further substantiated by Mr. Lipman's argument on this motion. Although Mr. Lipman never cited or argued the matter in any on-the-record presentation before the respondent, he argues on this motion that the

petitioner is entitled to the benefit of the nonconforming building provision of Zoning Local Law 48-25**. The applicability or inapplicability of this section clearly raises an issue of interpretation of the zoning ordinance. A nonconforming building is defined as "any building which contains a use permitted in the district in which it is located".

7. The Building Permit for the building in question, a copy of which is annexed to Mr. Lipman's affidavit, sworn to June 2, 1989, as Exhibit "P", shows that it was issued for a one-family dwelling in an R-4 zone. The petitioner now seeks to convert the use of the building to professional offices which requires site plan approval from the respondent. Mr. Lipman contends that the premises are interpreted as being in the NC zone and use as a professional office is permitted as of right therein.

8. Thus it seems clear that petitioner's remedy lies in the exclusive jurisdiction of the ZBA. The respondent referred the inadequate lot width issue to the ZBA. The ZBA is the only body with original jurisdiction to grant relief to petitioner for inadequate lot width, either by variance or by interpretation.

**The full text of Zoning Local Law 48-25 is attached to deponent's sur-reply affidavit, sworn to August 1, 1989, as Exhibit "A".

9. The respondent has no power to interpret the zoning ordinance. That is a power exclusively granted to the ZBA by Town Law 267 and Zoning Local Law 48-33.

10. Thus Mr. Lipman is wrong when he argues that the respondent interpreted the zoning ordinance. Mr. Lipman states

The respondent's interpretation of the zoning law was such that petitioner's lot width was deficient.

Sur-reply affidavit, sworn to September 19, 1989, paragraph "13", at page 5. The respondent did not interpret anything. The respondent did not have any power to interpret the zoning ordinance. When petitioner presented respondent with a site plan showing a provided lot width of 85 feet and a minimum required lot width of 100 feet, the respondent acted properly, and within its powers, by denying site plan approval and referring the petitioner to the ZBA.

11. Mr. Lipman further argues that the respondent's referral of the matter to the ZBA was

. . . nothing more than an invitation to the petitioner to apply to the Zoning Board of Appeals for its interpretation of the Zoning Code of the Town of New Windsor, - an invitation which the petitioner chose not to accept.

Sur-reply affidavit, sworn to September 19, 1989, paragraph "16", at pages 5-6. Mr. Lipman goes on to state that the petitioner

exercised its judgment in declining to apply to the ZBA and instead bringing this Article 78 proceeding. Unfortunately the petitioner may have exercised poor judgment in this instance because by declining to apply to the ZBA, the petitioner leaves itself vulnerable to having its petition dismissed upon exhaustion of remedies and/or non-final determination grounds.

12. The ZBA has the power to afford complete and adequate relief to the petitioner. I respectfully submit that this Court should not entertain review on this Article 78 proceeding until petitioner has pursued its available administrative remedies to a final determination. The matter sought to be reviewed on an Article 78 proceeding should be a determination which finally winds up the proceeding. The April 26, 1989 decision of the respondent is not, and does not purport to be, a final determination on the petitioner's site plan application.

13. If the petitioner is granted the relief sought on this Article 78 proceeding, i.e. approval of its site plan application, it will bypass the established planning and zoning procedures in the Town of New Windsor. I respectfully submit that this is contrary to public policy since it circumvents the right of the people of the Town of New Windsor to comment on petitioner's application--both before the ZBA on any variance and/

or interpretation application, as well as before the respondent on site plan review. Not only would the petitioner short circuit these public hearings, it would deprive the respondent of its right to exercise its discretion to approve or disapprove the site plan.

WHEREFORE, deponent respectfully prays for an Order dismissing the petition as a matter of law, together with costs and disbursements, or in the alternative, if the instant motion is denied, permitting the respondent to answer the petition, such answer to be served and filed within 14 days after service of the order with notice of entry, and for such other, further and different relief as to this Court may seem just, proper and equitable.

LT
Daniel S. Lucia

Sworn to before me this
6th day of October, 1989.

91
Notary Public

ELIZABETH M. BACKER
NOTARY PUBLIC, State of New York
Qualified in Orange County
Reg. No. 4582988
Commission Expires March 30, 1991

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

-against-

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent.

Index No. 3608-89

IAS Justice: HON.
PETER C. PATSALOS,
J.S.C.

RESPONDENT'S
SUR-REPLY
AFFIDAVIT

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.

STATE OF NEW YORK

ss:

COUNTY OF ORANGE

DANIEL S. LUCIA, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice
in the Courts of the State of New York, and I am the attorney for
the respondent in the above entitled proceeding.

2. I make this affidavit in sur-reply to the sur-reply
affidavit of Alan S. Lipman, Esq., sworn to on July 31, 1989, and
in further support of respondent's motion, pursuant to CPLR
7804 (f), to dismiss the petition as a matter of law on the

ground that said petition fails to state facts sufficient to entitle the petitioner to the relief sought therein, to wit,

- (1) petitioner seeks review of a non-final determination,
- (2) petitioner has not exhausted his administrative remedies, and
- (3) the application does not appear to be made in good faith for a legitimate and proper object.

3. In his sur-reply affidavit Mr. Lipman raises an argument based upon Zoning Local Law 48-25, a copy of which is annexed hereto as Exhibit "A". This is the nonconforming building section of the ordinance. As Mr. Lipman concedes, this section was never cited in any presentation before the respondent, except in an off-the-record conversation with Joseph P. Rones, Esq., the respondent's attorney, at the January 25, 1989 meeting.

4. The presentation on the record at the January 25, 1989 meeting indicates that Mr. Zimmerman, the petitioner's engineer, signed that this was a "pre-existing lot". Zoning Local Law 48-26, a copy of which also is annexed hereto as Exhibit "A", governs nonconforming lots of record.

5. Mr. Lipman thus is making an argument based upon a section of the ordinance which was not argued before the respondent, and, upon which, he now feels the respondent should have based its decision.

6, In addition, an examination of Zoning Local Law 48-25 A. indicates that said section may not be applicable at this point in time. Said section ~~contains~~ the following definition:

A nonconforming building is any building which contains a use permitted in the district in which it is located, bnt does not conform to the district regulations for lot area, width, . . . (emphasis added)

Mr. Lipman's argument is predicated upon the fact that the petitioner's building is assumed to lie in an NC zone. That assumption is not supported by the record. As Mr. Lipman well knows by virtue of his representation of petitioner in a prior Article 78 proceeding in this Court, brought against the Zoning Board of Appeals of the Town of New Windsor, New York (hereinafter "ZBA"), Index No. 6701-86, the ZBA's decision that the subject premises were in the R-4 zone was annulled and the matter " . . . remitted to the respondent Board (the ZBA) for proper findings of fact and a determination in accordance herewith . . . ", from a February 13, 1987 Decision and Order of Hon. Peter C. Patsalos, J.S.C. In the confusion engendered by an unperfected appeal and a change in ZBA attorneys, it appears that the ZBA has never made the necessary findings of fact and determination in accordance with Justice Patsalos' Decision and Order. Thus, the subject premises are apparently still zoned R-4, until the ZBA

makes new findings of fact. Consequently, it also appears that Mr. Lipman cannot rely upon the provisions of Zoning Local Law 48-25 at this point in time.

7. Thus it appears, once again, that there are preliminary matters which should be determined administratively before this matter should be subject to judicial review on an Article 78 proceeding. The ZBA should make the necessary findings of fact and determination on the zone in which the subject premises lie. In addition, there appears to be an interpretation question involved in whether petitioner's building is entitled to the nonconforming building status of Zoning Local Law 48-25. This is a question which lies solely within the jurisdiction of the ZBA. This question should be raised before the ZBA, presumably in connection with the referral by the respondent to the ZBA on the inadequate lot width issue, before the matter is subject to judicial review on this Article 78 proceeding.

WHEREFORE, ~~deponent~~ respectfully prays for an Order dismissing the petition as a matter of law, together with costs and disbursements, or in the alternative, if the instant motion is denied, permitting the respondent to answer the petition, such answer to be served and filed within 14 days after service of the order with notice of entry, and for such other, further and

different relief as to this Court may seem just, proper and equitable.


Daniel S. Lucia

Sworn to before me this
1st day of August, 1989.


Notary Public

PATRICIA B. AMENN (DUNN)
NOTARY PUBLIC, State of New York
Qualified in Orange County
Reg. No. 4914998
Commission Expires December 21, 1989

local law as if it were a use permitted by right and shall be exempt from the provisions above. Residential buildings not conforming to district regulations for lot area, width or depth; yards, height or lot coverage; or minimum livable floor area per dwelling unit shall, however, be subject to the provisions of §§ 48-25 and 48-26.

§ 48-25. Nonconforming buildings.

- A. A nonconforming building is any building which contains a use permitted in the district in which it is located, but does not conform to the district regulations for lot area, width or depth; front, side or rear yards; maximum height; lot coverage; or minimum livable floor area per dwelling unit.
- B. Normal maintenance and repair, structural alteration, moving, reconstruction or enlargement of a nonconforming building is permitted, provided that such action does not increase the degree of, or create any new, nonconformity with regard to the regulations pertaining to such buildings.

§ 48-26. Nonconforming lots of record.

- A. A residential plot separated by other land not in the same ownership, and nonconforming as to bulk on the date of enactment or the effective date of subsequent Zoning Local Law amendments, whether or not located in and part of a subdivision, and approved by the Planning Board of the Town of New Windsor and filed in the office of the Orange County Clerk, which does not have a total plot area specified for residential use in § 48-12, may be used for any use permitted by right in the zoning district in which the plot is located, provided that such uses comply with the bulk and area and yard regulations as specified in the highest residential district having the same or less plot width. Where such residential district requires certain utilities, the provision of such shall be prerequisite to its residential use.

- B. Two (2) or more nonconforming subdivision lots, not in separate ownership, in a subdivision approved by the Planning Board prior to the effective date of this local law, shall have three (3) years from the date of final approval by the Planning Board to obtain a building permit under the provisions of § 48-26A. Any nonconforming plot in a subdivision finally approved by the Planning Board more than three (3) years prior to the effective date of this local law shall not be eligible to receive a building permit, and said subdivision, part or plot thereof shall be resubmitted to the Planning Board in accordance with the applicable provisions of this local law.
- C. Any plot in a subdivision approved by the Planning Board after the effective date of this local law, which conforms to the bulk, width and depth requirements of this local law but which is made nonconforming as to bulk, width or depth by any future amendment of this local law, shall have three (3) years from the effective date of the future amendment, or three (3) years from the date of final approval, whichever is sooner, to obtain a building permit under § 48-26A. Any subdivision plot for which a permit is applied for after the time periods specified herein shall conform to all the bulk regulations of this local law, and § 48-26A shall be inapplicable to such a plot.
- D. Any separate plot nonconforming as to bulk, which becomes subsequently attached to other adjoining land in the same ownership, shall be entitled to the benefit of the provisions of § 48-26A only if the total contiguous plot remains nonconforming as to bulk after the plots become attached.
- E. [Added 9-17-86 by L.L. No. 3—1986] A nonconforming residential lot, as described in § 48-26A, which does not comply with the bulk area and yard regulations as specified in the highest residential district having the same or less plot width may, nevertheless, be developed with a one-family residence only, provided that:
- (1) Such lot shall contain not less than five thousand (5,000) square feet.

- (2) Such lot is served by both central sewer and central water.
 - (3) The proposed house shall contain not less than one thousand (1,000) square feet of livable floor area and have a building height not exceeding thirty (30) feet.
 - (4) The front yard shall be at least thirty-five (35) feet unless a smaller front yard is reasonable to conform to the building lines of adjacent lots.
 - (5) The rear yard shall be at least forty (40) feet.
 - (6) The lot shall have at least fifty (50) feet of street frontage.
 - (7) Lots of widths of fifty (50) feet and less than eighty (80) feet may be developed with side yards on each side of at least twelve (12) feet.
 - (8) Lots of widths of eighty (80) feet and less than one hundred (100) feet may be developed with side yards on each side of at least thirteen (13) feet.
- F. It is the finding of the Town Board that the development of nonconforming lots not meeting the above criteria will blight the proper and orderly development and general welfare of the community. [Added 9-17-86 by L.L. No. 3—1986]

§ 48-27. Elimination of certain nonconformities.

- A. Each of the nonconforming uses specified herein is deemed sufficiently objectionable, undesirable and out of character in the district in which such use is located as to depreciate the value of other property and uses permitted in the district and to blight the proper and orderly development and general welfare of such district and the community to the point that each of such nonconforming uses shall be terminated on or before the expiration of the specified period of time after the effective date of this local law, which period of time is specified for the purpose of permitting the amortization of the remaining value, if any, of such use:

SUPREME COURT OF THE STATE OF NEW YORK
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Respondent.

Index No. 3608-89

IAS Justice: HON.
PETER C. PATSALOS,
J.S.C.

REPLY AFFIDAVIT

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.

STATE OF NEW YORK

ss:

COUNTY OF ORANGE

DANIEL S. LUCIA, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice
in the Courts of the State of New York, and I am the attorney for
the respondent in the above entitled proceeding.

2. I make this affidavit in reply to the affidavit in
opposition of Alan S. Lipman, Esq., sworn to on July 25, 1989,
and in further support of respondent's motion, pursuant to CPLR
7804 (f), to dismiss the petition as a matter of law on the
ground that said petition fails to state facts sufficient to
entitle the petitioner to the relief sought therein, to wit,
(1) petitioner seeks review of a non-final determination,

(2) petitioner has not exhausted his administrative remedies, and
(3) the application does not appear to be made in good faith for a legitimate and proper object.

3. I note, preliminarily, that the caption on Mr. Lipman's aforesaid affidavit in opposition inexplicably has changed from the caption contained in the Notice of Petition, Petition and Affidavit of Alan S. Lipman, Esq., sworn to on June 2, 1989. Each of those three papers bore the above caption which seeks reversal of respondent's decision of April 26, 1989. Without any application or explanation, the caption on Mr. Lipman's affidavit in opposition, sworn to on July 25, 1989, seeks reversal of respondent's decision of March 8, 1989 and adds further explanatory language.

4. Not only is this purported change in caption unsupported by anything in the record, it also raises the issue of timeliness.

5. If the petitioner now is seeking a reversal of respondent's March 8, 1989 decision, said application would be untimely under Town Law 274-a (3). An Article 78 proceeding to review the respondent's decision of March 8, 1989 would have to be instituted within thirty days after the filing of the decision in the office of the Town Clerk. The minutes of the respondent's March 8, 1989 meeting, which contain a decision on a motion to refer the petitioner's site plan to the Zoning Board of Appeals (hereinafter "ZBA") because there is not enough lot width, were

filed in the office of the Town Clerk on March 21, 1989. The instant proceeding was not commenced until June 5, 1989. Thus any attempt to seek reversal of the respondent's March 8, 1989 decision is untimely on its face.

6. It is interesting to note in this connection that the petitioner's application only came up before respondent again on April 26, 1989 because the respondent's attorney, Joseph P. Rones, Esq., believed that the form of the March 8, 1989 motion was not sufficiently clear. The end result of the March 8, 1989 and April 26, 1989 motions on this application were the same-- the matter was referred to the ZBA due to inadequate lot width.

7. Turning now to the specific issues raised on this motion to dismiss the petition, I note that Mr. Lipman's affidavit in opposition contains a number of partial quotations from respondent's minutes and from the Town of New Windsor's Zoning Local Law which give a one-sided presentation of the matter before this Court. I offer for this Court's consideration a more balanced presentation of the issues.

NON-FINAL DETERMINATION

8. Mr. Lipman's affidavit in opposition (at paragraph 7, page 4) states that the referral to the ZBA by the respondent was an "afterthought". A review of the respondent's minutes of the proceedings on this application clearly disproves this assertion. Petitioner's application first appeared on respondent's

agenda on November 18, 1987. Zoning Local Law 48-19 C. (3)* requires that the Planning Board Engineer " . . . shall report to the Planning Board whether the plan meets the requirements of all zoning law provisions . . . ". An examination of the review comments of Mark J. Edsall, P.E. of 18 November 1987, a copy of which are attached to the respondent's minutes of the same date, reveals the following at comment 6:

The Board may wish to note that the existing conditions are such that the minimum requirements for lot width and total side yard set back are not met.

9. Despite the fact that the lot width issue was raised at the very first meeting at which respondent considered petitioner's application, petitioner never addressed the issue.

10. Respondent considered this application for the second time at its May 25, 1988 meeting. Again that evening Planning Board Engineer Mark J. Edsall in his review comments of the same date, a copy of which are attached to the respondent's minutes, notes at comment 2:

The Board may wish to verify that the subject property is located within the NC Zone. If so, the site plan complies with all minimum requirements of the Bulk Table, with the exception of the provided lot width.

11. The petitioner did not address the lot width issue the second time this application appeared on respondent's agenda on May 25, 1988 or the third time it appeared before respondent on June 8, 1988.

12. It was not until the fourth time this matter

*The text of all cited sections of the Zoning Local Law are attached as exhibits to deponent's affidavit in support of motion, sworn to July 7, 1989.

appeared on respondent's agenda, on January 25, 1989, that the petitioner addressed the lot width issue, and this was only after prodding by the respondent's attorney and engineer. The following are the relevant portions of the minutes of the respondent's January 25, 1989 meeting:

Mr. Rones: . . . You have got a minimum lot width in this zone of a 100 feet and you don't appear to have a lot width of 100 feet so that is one of the things that is causing some difficulty as far as getting the proper circulation around the building and to the rear as far as parking is concerned. And, there are some other areas, I believe, that don't conform to the area requirements.

Mr. Zimmerman: That is the only thing, the lot width is required a 100 feet. This lot is 85. However, it is a pre-existing lot. . . .

* * *

Mr. Lipman: The bottom line is we are not going away. This is a review administratively to determine what may best be done to satisfy your requirements for site plan. We can't do anything about moving the house. We can't do anything about making the lot wider. But, we are going to apply it for a permitted use. You have got to tell us what reasonable requirements you have to allow us to get a site plan approved.

Mr. Edsall: One note which may be before and I agree with Henry, that it would be beneficial in hearing what the public has to say but before you go that step, we should not that the plan is very accurate in its note that a lot width variance would be required for this use in this zone.

Mr. Zimmerman: We didn't say it was required, it is a pre-existing residential use but the bulk requirements are related to the use which you are now proposing and for that use, you require a lot width variance, Mr. Rones, is that correct.

Mr. Rones: I really couldn't tell you off the top of my head. I appreciate your argument that just hasn't been considered before.

Mr. Edsall: If you change the use on a lot from residential to commercial and the width requirements for that commercial use is such that you don't have enough width with the lot you are proposing to do it on, you do require a variance.

Mr. Rones: What you are saying may or may not be true. Whether that is relevant to exactly what is happening here, I just can't answer.

Mr. Edsall: Based on the sceniaro I presented, is that an accurate statement.

Mr. Rones: I am not prepared to say.

Mr. Edsall: I think that should be looked into.

Mr. VanLeeuwen: I think our attorney should research that.

Mr. Rones: If I could say on that, whether or not it needs a variance with respect to area or not is something that we could think about but that is really up to the Zoning Board of Appeals and not up to us to interpret the ordinance as, you know, this is kind of a situation as to whether it requires an area variance or not.

Mr. McCarville: I second that. . . .

* * *

Mr. Schiefer: We will schedule a public hearing as soon as possible. In the meantime, Mr. Rones, could you look into the legal aspect or you work with the Zoning Board of Appeals.

Mr. Rones: I will refer the question to the Zoning Board of Appeals' attorney and see if we do need a variance for the 85. I don't know either.

13. This matter appeared on the respondent's agenda for the fifth time on March 8, 1989 and the following is the entire discussion of the matter that evening:

Mr. VanLeeuwen: I make a motion to refer the Windsor Counseling Group Site Plan back to the Zoning Board of

Appeals because there is not enough lot width. This is following a review of a memorandum from the Zoning Board of Appeals Attorney to the Planning Board Attorney dated 3 March, 1989.

Mr. McCarville: I will second that motion.

ROLL CALL:

Mr. McCarville	Aye
Mr. VanLeeuwen	Aye
Mr. Pagano	Aye
Mr. Soukup	Aye
Mr. Jones	Aye
Mr. Lander	Aye
Mr. Schiefer	Aye

14. This matter appeared on the respondent's agenda for the sixth time on April 26, 1989. I take the liberty of quoting excerpts from the minutes of that meeting which Mr. Lipman omitted from his affidavit in opposition.

Mr. Rones: Regarding New Windsor Counseling Group, somehow the resolution or the motion didn't quite get it all as far as the minutes were concerned or maybe it did, I don't mean to put it quite that way but maybe it just came across wrong, contrary to the way we always do things as far as making a motion to deny a site plan because it needs referral to the Zoning Board of Appeals and then voting no, this application came across an affirmative motion in the minutes of March 8th. Mr. VanLeeuwen, according to the minutes, made it.

* * *

Mr. Rones: The motion says what is reflected in the minutes here is Mr. VanLeeuwen, I make a motion to refer the Windsor Counseling Group site plan back to the Zoning Board of Appeals because there is not enough lot width. This is following a review of the memo from the Zoning Board of Appeals Attorney to the Planning Board Attorney dated 3 March, 1989. Mr. McCarville seconded and there was a unanimous vote of ayes.

Mr. VanLeeuwen: I will withdraw that motion.

Mr. Rones: It is just that there was more to it and the record isn't--I don't think reflects everything that went into the decision, as I recall.

Mr. VanLeeuwen: Are you objecting to us throwing them out.

Mr. Rones: No. The reason for my bringing this up, I wrote a letter the next day or so to the Windsor Counseling Group's attorney explaining to them that the night before the Planning Board voted to deny their site plan without prejudice to reviewing (renewing), after they obtain or if they obtain the variance from the Zoning Board of Appeals for lot width. I forwarded him a copy of the letter over.

* * *

Mr. Rones: . . . (our) usual format . . . is that we would deny the site plan.

Mr. VanLeeuwen: I make a motion that we deny the site plan.

Mr. Rones: And then after you have denied the site plan, refer them to the Zoning Board of Appeals.

Mr. VanLeeuwen: Due to inadequate lot width and he made --

Mr. Rones: I believe it is just due to inadequate lot width.

* * *

Mr. VanLeeuwen: . . . I made a motion to approve the Windsor Counseling site plan.

Mr. McCarville: I will second that motion.

ROLL CALL:

Mr. McCarville	No
Mr. VanLeeuwen	No
Mr. Soukup	No
Mr. Jones	No
Mr. Lander	No
Mr. Schiefer	No

Mr. VanLeeuwen: Reasons for turning him down, there is, there seems to be inadequate lot width.

* * *

Mr. Rones: . . . and does the Planning Board also refer this matter to the Zoning Board of Appeals.

Mr. VanLeeuwen: Yes . . .

15. My purpose in quoting excerpts from the April 26, 1989 minutes of the respondent which were omitted by Mr. Lipman is to illustrate the one-sided presentation in his affidavit in opposition. Fundamental fairness requires a more balanced presentation.

16. It seems quite clear that the respondent's attorney, Joseph P. Rones, Esq., was attempting to guide the respondent in following their usual procedure, to wit, to deny the petitioner's site plan because it needs a referral to the ZBA due to inadequate lot width. As Mr. Rones stated, the denial would be without prejudice to renewal if the petitioner obtained a variance.

17. The inadequate lot width issue was far from an "afterthought". It was the predicate for the denial of site plan approval and referral to the ZBA.

18. Zoning Local Law 48-19 C. (1) requires that the petitioner attend a presubmission conference in order to determine which site plan elements shall be submitted to the respondent " . . . in order for said Board to determine conformity with the provisions and intent of this local law." In this instance the

respondent found that there was inadequate lot width. Clearly this is a condition which does not conform with the provisions and intent of the zoning ordinance. Therefore the respondent took the proper action: it denied the site plan application and referred the matter to the ZBA.

19. The remaining grounds stated in the respondent's April 26, 1989 decision, besides inadequate lot width, are legal surplusage. The denial of site plan approval could not, at this juncture, prior to the public hearing, be predicated upon the inadequacy of the private road, the improvements made to the site without site plan approval, or the occupancy of the premises by a resident. Those grounds might well be sufficient findings to deny site plan approval after a public hearing, after the petitioner has had an opportunity to be heard on those issues. Unfortunately, their inclusion in the minutes only clouds the one fundamental, and quite proper, reason for denial of site plan approval, namely, the inadequate lot width, which resulted in the referral to the ZBA.

20. I respectfully ask this Court to bear in mind that the members of the respondent are laymen. They have heard over and over that, if one of their decisions is challenged in court, it will only be upheld if it is supported by "findings" in the record. In this instance, faced with an applicant known to be litigious, the respondent members "heaped on" the findings in the mistaken belief that they were supporting the denial. In actuality,

as Mr. Ronces attempted to guide the respondent, the inadequate lot width, in and of itself, was alone a sufficient ground upon which to predicate the denial and referral to the ZBA.

21. While inadequate lot width as the predicate for the April 26, 1989 decision may have become obfuscated in the minutes of that meeting, the Notice of Disapproval of Site Plan or Subdivision Application, dated 16 May 1989, is quite clear. A copy thereof is annexed hereto as Exhibit "A". It advises the applicant as follows:

PLEASE TAKE NOTICE that your application . . . for Site Plan . . . is returned herewith and disapproved for the following reasons. VARIANCE REQUIRED FOR INSUFFICIENT LOT WIDTH

* * *

<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
* * *		
Min. Lot Width		
100 ft	85 ft	15 ft

22. Zoning Local Law 48-19 C. (5) gives the respondent discretion to require a public hearing for site plan approval. At its January 25, 1989 meeting the respondent adopted a motion to set up this application for a public hearing. Said public hearing has not yet been held since the matter was referred to the ZBA due to inadequate lot width. It is not until after the ZBA passes on the lot width issue that the matter will come back to the respondent for a public hearing. This public hearing, when it is held, is the "meeting" envisioned by Zoning Local Law

48-19 C. (6) which will trigger the ninety day period for the respondent to approve or disapprove the site plan. At this point in time, the respondent has not yet exercised its discretion; it has not finally approved or disapproved the site plan. It has denied site plan approval, due to inadequate lot width, in order to refer the matter to the ZBA.

23. The April 26, 1989 decision of the respondent is not a final determination and it does not purport to be a final determination on the merits of petitioner's site plan application. It does not wind up this proceeding. It merely refers the matter to the ZBA. This clearly is an intermediate step which is not subject to judicial review on an Article 78 proceeding.

EXHAUSTION OF REMEDIES

24. I respectfully must take exception to Mr. Lipman's contention that there is no procedure, or no authority, for the respondent to refer a matter to the ZBA. The state enabling statute for ZBAs is found in Town Law 267 (2) which provides

It (the ZBA) shall also hear and decide all matters referred to it or upon which it is required to pass under any such (zoning) ordinance.

25. New Windsor's Zoning Local Law 48-33 A. (1) empowers the ZBA

. . . on request by (a) . . . board . . . of the town, to decide any of the following questions:

- (1) Determination of the meaning of any portion of the text of this local law or of any condition or requirement specified or made under the provisions of this local law.

Clearly this language is broad enough to empower the ZBA to hear and decide a referral by respondent Planning Board of the issue of inadequate lot width appearing on the petitioner's site plan application.

26. Once the respondent has referred the petitioner's application to the ZBA due to inadequate lot width, this act creates an available remedy for the petitioner. The ZBA has the power to grant the petitioner full and adequate relief from the inadequate lot width. Thus it would appear that the petitioner must exhaust this remedy before resorting to an Article 78 proceeding.

27. While it is true, as Mr. Lipman points out, that Town Law 274-a (3) permits review by Article 78 proceeding of any decision of a planning board, it is also true that the courts generally will not entertain certiorari to review when the party seeking it has another adequate remedy, at least until that remedy has been exhausted.

GOOD FAITH

28. The respondent has determined to refer the issue of inadequate lot width to the ZBA. Petitioner simply does not want to take any proceeding before the ZBA. Is this petitioner acting in good faith? Petitioner is asking this Court to determine that no lot width variance is needed (before the ZBA can hear and decide the issue) and to grant site plan approval (before the respondent has conducted a public hearing and exercised its discretion).

WHEREFORE, deponent respectfully prays for an Order dismissing the petition as a matter of law, together with costs and disbursements, or in the alternative, if the instant motion is denied, permitting the respondent to answer the petition, such answer to be served and filed within 14 days after service of the order with notice of entry, and for such other, further and different relief as to this Court may seem just, proper and equitable.


Daniel S. Lucia

Sworn to before me this

28th day of July, 1989.


Notary Public

PATRICIA B. AMENN (Dunn)
NOTARY PUBLIC, State of New York
Qualified in Orange County
Reg. No. 4914998
Commission Expires December 21, 1989

OFFICE OF THE PLANNING BOARD
TOWN OF NEW WINDSOR
ORANGE COUNTY, N.Y.

NOTICE OF DISAPPROVAL OF SITE PLAN OR SUBDIVISION APPLICATION

P-B
File No. B7-53

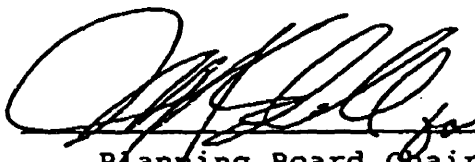
Date 16 MAY 1989

To: WINDSOR COUNSELING GROUP
196 QUASSACK AVE
NEW WINDSOR N.Y. 12550

PLEASE TAKE NOTICE that your application dated 15 JULY 1989
for (~~Subdivision~~ - Site Plan)
located at OFF QUASSACK AVE - RT 94
(PLAN LAST REVISION # 4 DATED FEB 10, 1989)

is returned herewith and disapproved for the following reasons.

VARIANCE REQUIRED FOR INSUFFICIENT LOT WIDTH


Planning Board Chairman
CARL SCHEIBER

NC- A-9

Requirements

Min. Lot Area 10 DDD SF
 Min. Lot Width 100 FT
 Req'd Front Yd. 40 FT
 Req'd. Side Yd. 15-35 FT
 Req'd. Rear Yd. 15 FT
 Req'd. Street
 Frontage* N-A
 Max. Bldg. Hgt. 35 FT
 Min. Floor Area* N-A
 Dev. Coverage* N-A %
 Floor Area Ratio** 1

Proposed or
Available

19116 SF
85 FT
48 FT
16-35 FT
106 FT

Variance
Request

—
15 FT
—
—
—

*. Residential Districts only

** Non-residential Districts only

*** NO VALUE INDICATED ON PLAN
 NOR ANY VARIANCE REQUESTED

~~APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT (014-565-8550)~~
~~TO MAKE AN APPOINTMENT WITH THE ZONING BOARD SECRETARY.~~

CC ZBA

MJE

~~XXXXXXXXXX~~ *Sag.*

MAY 18 1991

.....X
In the Matter of the Application

of

**SUR-REPLY
AFFIDAVIT**

- against -

THE PLANNING BOARD OF THE TOWN OF,
NEW WINDSOR, NEW YORK,

**Name of Assigned
Judge: Hon. Peter
C. Patsalos**

Respondent.

**For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.**

.....X

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

1. I am an attorney at law, duly admitted to practice before the Courts of the State of New York, maintaining offices at One Harriman Square, Goshen, New York.

3. I make this affidavit in sur-reply to the sur-reply affidavit of Daniel S. Lucia, sworn to August 1, 1989.

4. Although everyone likes to have the last word, that "last word" cannot introduce entirely new issues without the expectation of a response. That is the case in connection with the pending motion by the respondent, to dismiss.

5. Mr. Lucia, in his affidavit of August 1, 1989, argues now, for the first time in this proceeding, that the petitioner's premises are zoned R-4, rather than N-C, and that therefore the provisions of §48-25 of the New Windsor Zoning Code do not apply to petitioner's application for site plan approval to the respondent.

6. Mr. Lucia's argument is based upon the fact that subsequent to this Court's decision of February 13, 1987 (annexed to my affidavit sworn to on June 2, 1989 as Exhibit "H" and annexed hereto as Exhibit "A"), the Zoning Board of Appeals did not make "proper findings of fact and a determination in accordance herewith" as this Court's order directed. He therefore draws the conclusion that because the Zoning Board of Appeals' erroneous decision, adopted on September 22, 1986 (annexed hereto as Exhibit "B"), determined the petitioner's premises to be zoned R-4, that they are so zoned.

7. This Court's decision of February 13, 1987 (Exhibit "A" hereof) annulled the Zoning Boards of Appeals' decision of September 22, 1986. Without that decision, there is no interpretation which places property in the R-4 zone. I do not really believe that Mr. Lucia would like to test, for the second time, the zoning district in which the petitioner's premises lie. Such a proceeding would be frivolous. With no significance to the Zoning Board of Appeals' decision of September 22, 1986, the petitioner's premises are zoned N-C.

8. At the beginning of the proceedings before the

respondent, following this Court's decision of February 13, 1987, an issue was raised by Mr. Rones as to the finality of the Court's decision because an appeal was then pending to the Appellate Division, Second Department. The respondent was not anxious to waste its time considering this application until that appeal was disposed of. Later, when it was disposed of (as dismissed), there was no reluctance on the part of the respondent to entertain this application because, by virtue of that decision, this property was effectively zoned N-C, - neighborhood commercial. At no time thereafter in the proceedings before the respondent, was the issue of the zone classification of the premises ever raised again. At no point in the deliberations of the respondent, nor in the respondent's several decisions hereunder, was the issue of the zone classification of the premises ever raised again. Indeed, the motion before this Court is not even based upon the zone classification of the premises.

9. I have no doubt, Mr. Rones (the respondent's attorney and the attorney for the Zoning Board of Appeals), had no doubt, and the respondent itself had no doubt that the impact of this Court's decision of February 13, 1987, was that the petitioner's premises were effectively zoned NC.

10. Simply stated, Mr. Lucia is wrong about this subject and dead wrong about the inapplicability of §48-25 of the New Windsor Zoning Code to the petitioner's premises and application.

11. Whether on January 25, 1989, the term pre-existing

lot or nonconforming building was used by Mr. Zimmerman, makes no difference at all. On that occasion, the attorney for the respondent was charged with the responsibility to review the implications of the change of use from residential to commercial, and as the minutes of January 25, 1989 reflect, these are statements made on this subject at that time:

Mr. Lipman: The bottom line is we are not going away. This is a review administratively to determine what may best be done to satisfy your requirements for site plan. We can't do anything about moving the house. We can't do anything about making the lot wider. But, we are going to apply it for a permitted use. You have got to tell us what reasonable requirements you have to allow us to get a site plan approved.

Mr. Edsall: One note which may be before and I agree with Henry, that it would be beneficial in hearing what the public has to say but before you go that step, we should note that the plan is very accurate in its note that a lot width variance would be required for this use in this zone.

Mr. Zimmerman: We didn't say it was required, it is a pre-existing residential use but the bulk requirements are related to the use which you are now proposing and for that use, you require a lot width variance, Mr. Rones, is that correct?

Mr. Rones: I really couldn't tell you off the top of my head. I appreciate your argument that just hasn't been considered before.

Mr. Edsall: If you change the use on a lot from residential to commercial and the width requirements for that commercial use is such that you don't have enough width with the lot you are proposing to do it on, do you require a variance.

Mr. Rones: What you are saying may or may not be true. Whether that is relevant to exactly what is happening here, I just can't answer.

Mr. Edsall: Based on the scenario I presented, is that an accurate statement?

Mr. Rones: I am not prepared to say.

Mr. Edsall: I think that should be looked into.

Mr. VanLeeuwen: I think our attorney should research that.

12. The respondent, in its consideration of applications before it, is responsible to know and understand the provisions of its own zoning law. §48-25 of the Code cannot be new reading material for the respondent (or Mr. Lucia). It was indeed, the only basis upon which the Nugent application could have been granted by the respondent.

13. The lengths to which this respondent appears to be willing to go, in order to prevent judicial review of its conduct in these proceedings, seems unlimited. The sparring should end and that review should begin.

WHEREFORE, deponent prays for an order denying respondent's motion to dismiss and for such other and further relief as to the Court may seem just and proper.



Alan S. Lipman

Sworn to before me this
5th day of August, 1989


Notary Public

BARBARA LEIN
Notary Public, State of New York
No. 4914949
Qualified in Orange County
Term Expires Dec. 21, 1989

\BARBARA\WDSRASL3.REP

SUPREME COURT—STATE OF NEW YORK
TRIAL/SPECIAL TERM PART—ORANGE COUNTY

Present: **PETER C. PATSALOS**

Hon. _____

SUPREME COURT: ORANGE COUNTY

Justice.

In the Matter of the Application of
WINDSOR COUNSELING GROUP, Petitioner,
- against -

**THE ZONING BOARD OF APPEALS OF THE TOWN OF
NEW WINDSOR, NEW YORK,** Respondent,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules, Reversing a
Certain Decision Adopted by Respondent on
September 22, 1986, and Determining that the
Premised of the Petitioner, Designated as
Section 19, Block 4, Lot 58, on the Tax Maps
of the Town of New Windsor, New York, are
located in an N C Zoning District.

To commence the statutory time
period for appeals as of right
(C P L R 5 5 1 3 ☒), you are
advised to serve a copy of this
order, with notice of entry, upon
all parties.

INDEX
NUMBER 6701 19 86
MOTION January 29 87
DATE 19
MOTION
CAL NUMBER _____
TRIAL
CAL NUMBER _____

The following papers numbered 1 to 10 read on this motion. petition pursuant to CPLR
Article 78 to, inter alia, annul a decision of respondent Zoning Board of
Appeals.

	PAPERS NUMBERED
Notice of Motion/ <u>Petition</u> / <u>Petition</u> Order to Show Cause —Affidavits	<u>1-3</u>
Answering Affidavits <u>Answer</u>	<u>4-5</u>
Replying Affidavits	<u>6-7</u>
Sur-Reply Affidavits	<u>8</u>
Filed Papers	
Pleadings—Exhibits—Stipulations—Minutes	<u>9-10</u>
Briefs: Plaintiffs/Petitioner's	
Defendant's/Respondent's	

Upon the foregoing papers it is ORDERED that this motion petition is disposed of as
follows:

In light of the undisputed location of the existing zone district
boundaries, the unrefuted evidence that these boundaries run "diagonally
across the [petitioner's] property" and the existing rules for "determining
the boundaries of districts shown on the [zoning] map", the Court concludes
that the alleged "findings of fact" contained in respondent's decision dated
September 22, 1986 lack any basis in fact and that the subject decision in-
terpreting the zoning map to include the subject property within the R-4
zone was arbitrary, capricious and unsupported by the evidence (see, CPLR
Article 78; Matter of County of Nassau v State of New York Public Employment
Relations Bd., 103 AD2d 274).

Accordingly, the decision of the respondent Zoning Board of Appeals
must be annulled and the matter remitted to the respondent Board for proper
findings of fact and a determination in accordance herewith (see, Matter of
Furey v County of Suffolk, 105 AD2d 41).

The foregoing constitutes the decision and order of the Court.

Dated February 13, 1987 Entered _____

Peter C. Patsalos
Hon. Peter C. Patsalos

J.S.C.

Index No. 6701/86

Page Two

Windsor Counseling v Zoning Board, et al

TO: ✓ FABRICANT, LIPMAN & STERN, ESQS.
Attorneys for Petitioner
One Harriman Square, P.O. Box 60
Goshen, New York 10924

FINKELSTEIN, KAPLAN, LEVINE, GITTELSON & TETENBAUM, PC
Attorneys for Respondent
436 Robinson Avenue
Newburgh, New York 12550

ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

-----X
In the Matter of the Application for
an Interpretation of

WINDSOR COUNSELING GROUP

DECISION INTERPRETING
ZONING MAP

#86-6.
-----X

WHEREAS, the applicants, ELAINE ZIMMERMAN, SHARON BELINSKY and SANDRA HERRIES, d/b/a WINDSOR COUNSELING GROUP, a co-partnership with an office located at 196 Quassaick Avenue, New Windsor, New York, owners, have made application before the Zoning Board of Appeals for an Interpretation of the Zoning Map as it effects the premises known as 196 Quassaick Avenue, New Windsor, New York, to determine whether said premises is governed by the regulations for an R-4 zone or an NC (neighborhood commercial) zone; and

WHEREAS, a public hearing was held on the 11th day of August, 1986 at the Town Hall, 555 Union Avenue, New Windsor, N. Y.; and

WHEREAS, the applicant, WINDSOR COUNSELING GROUP, was represented by Alan S. Lipman, Esq. of Fabricant, Lipman & Stern, One Harriman Square, Goshen, N. Y. 10924; and

WHEREAS, the application was opposed by one William Keeler, residing at 192 Quassaick Avenue, New Windsor, N. Y., who proposed to represent nine (9) or so adjacent property owners, Patricia Tomashevski of 4 Doral Drive, New Windsor, N. Y. and Rose Navarra of 1 Doral Drive, New Windsor, N. Y.; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following findings of fact in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The Sentinel, also as required by law.

2. The evidence shows that the district boundary line is approximately 200 ft. east of the subject premises and is construed as approximately following the center line of NYS Highway #94.

3. The evidence shows that the district boundary line which traverses the subject premises in a generally north/south direction is construed to be intended as parallel to NYS Highway #94.

4. The evidence shows that the district boundary line which traverses the subject premises in a generally north/south direction is construed to be 200 ft. back from the right-of-way of NYS Highway #94.

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law in this matter:

1. The subject premises being known as 196 Quassaick Avenue and also being designated on the tax map of the Town of New Windsor as Section 19, Block 4, Lot 58, is located in an R-4 zone.

NOW, THEREFORE, BE IT

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and the applicant.

Dated: September 22, 1986.


Chairman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

.....X

In the Matter of the Application

of

WINDSOR COUNSELING GROUP,

Petitioner,

- against -

THE PLANNING BOARD OF THE TOWN
OF NEW WINDSOR, NEW YORK,

Respondent,

SUR-REPLY
AFFIDAVIT

Index No.
3608-89

Name of Assigned
Judge: Hon. Peter
C. Patsalos

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by the Respondent
on April 26, 1989.

.....X

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

ALAN S. LIPMAN, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice
before the Courts of the State of New York, maintaining offices at
One Harriman Square, Goshen, New York.

2. I am the attorney for the Petitioner in the above
entitled proceeding. I am fully familiar with the facts and
circumstances herein.

3. I make this sur-reply affidavit in response to new
material submitted to the Court by Mr. Lucia in his affidavit of
September 8, 1989.

4. A series of affidavits have been submitted to this
Court by Mr. Lucia and myself, relating to a motion made by the

respondent to dismiss the petition in this proceeding on three different grounds: a) the petitioner seeks review of a non-final determination; b) the petitioner has not exhausted his administrative remedies; and c) the application does not appear to be made in good faith for a legitimate and proper object.

5. In my affidavit in opposition, sworn to on July 25, 1989, I addressed each of those issues. With respect to the first issue (non-final determination) I referred this court to the provisions of the Town of New Windsor Zoning Ordinance, particularly Section 48-19 C.6 and as well, the provisions of Section 274-a, Subdivision 2 of the Town Law. Both of those laws require a planning board to approve or disapprove or to decide same. No provision exists by which in approving, denying or deciding upon an application, that a referral may be made to another agency of the Town of New Windsor, particularly the Zoning Board of Appeals. I refer this Court also to the provisions of CPLR 7801, which provide in pertinent part, as follows:

" . . . Except where otherwise provided by law, a proceeding under this article shall not be used to challenge a determination:

1. which is not final or can be adequately reviewed by appeal to a court or to some other body of officer or where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the petitioner's application unless the determination to be reviewed was made upon a rehearing, or a rehearing has been denied, or the time within which the petitioner can procure a rehearing has elapsed"

6. The determination made by the respondent in this proceeding cannot be reviewed by appeal to a court, nor can it be

reviewed by some other body or officer. Nor is there a provision in the Town Law, or elsewhere, for rehearing by the respondent. By those standards (or indeed by any other standards), the respondent's determination in this proceeding is a final determination.

7. The concepts of non-final determinations and exhaustion of administrative remedies, are one and the same. A determination becomes final when there is no administrative body to which an appeal lies. In this instance that is precisely the plight of the petitioner. There is no appeal which lies from a decision of the respondent to the Zoning Board of Appeals. The only procedure available to the petitioner to challenge the respondent's denial of site plan approval, is to the Court in this proceeding.

8. Mr. Lucia has argued here, there and everywhere, that respondent's determination cannot be final because it has not even conducted a public hearing to review the specifics of the site plan. What he really means (but does not say) is that the determination of the respondent was precipitous and premature, - but no less final.

9. Mr. Lucia argues that the denial of site plan approval was only for the reason that the respondent determined that the petitioner required a variance of lot width (notwithstanding that a half dozen other reasons are recited in and about its decision). Indeed, the dialogue before the respondent reflected a lot width requirement of 100 feet and the lot width provided 85 feet. Of course, the lot width standard was derived from the bulk

requirements of the NC zone, - proof positive that no issue existed with respect to the zone classification of petitioner's premises, at the time respondent's determination was announced on April 26, 1989.

10. In his affidavit of September 8, 1989 and in an effort to lend some confusion to these issues, Mr. Lucia suggests that a decision of the Zoning Board of Appeals is needed to determine the zone classification of the premises. In support of that position, he refers to a statement attributed to Mr. Roncs (the attorney for the Planning Board) at its November 18, 1987 meeting, substantially prior to the date of the determination under review in this proceeding.

11. At that time Mr. Roncs did speak about the issue of the zone classification of the premises of the petitioner, but that dialogue occurred before the dismissal on June 23, 1988 of a then pending appeal to the Appellate Division, from the decision of the Honorable Peter Patsalos, dated February 13, 1987, after which the issue never again arose. The inclusion of that language in his September 8, 1989 affidavit was misleading.

THE REFERRAL ISSUE

12. A great deal of time has been spent and a great many words used by both sides in this proceeding, on the issue of the referral by the respondent to the Zoning Board of Appeals.

13. There is no process by which matters get referred from a planning board to a zoning board of appeals, even in New Windsor. What occurred here was that the respondent, albeit

erroneously, decided that the petitioners needed a lot width variance. The respondent's interpretation of the zoning law was such that petitioner's lot width was deficient. With that interpretation, the petitioners do not agree, particularly because of the provisions of Section 48-25 of the New Windsor Code and the interpretation necessarily given that section on other similar applications pending before the respondent contemporaneously with petitioner's application.

14. Petitioners are entitled to challenge this decision of the respondent based upon its erroneous interpretation of the ordinance, or otherwise, and the respondent is not able to step aside from that challenge, by simply saying that they "referred this matter to the Zoning Board of Appeals".

THE PETITIONER'S BAD FAITH

15. Mr. Lucia suggests in his affidavit of September 8, 1989, that "This proceeding arose because the petitioner did not want to exhaust its administrative remedies by having the ZBA determine the inadequate lot width issue which was referred to the ZBA by the respondent. Additionally, the ZBA is the only body which can decide the interpretation question of whether petitioner's building is entitled to the nonconforming building status of Zoning Local Law 48-25 . . .".

16. The referral to the Zoning Board of Appeals by the respondent was nothing more than an invitation to the petitioner to apply to the Zoning Board of Appeals for its interpretation of the Zoning Code of the Town of New Windsor, - an invitation which

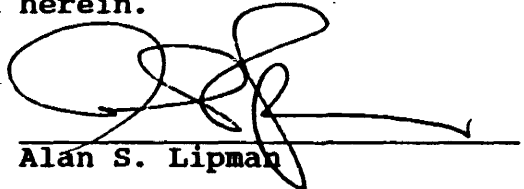
the petitioner chose not to accept. Hardly, a referral, but rather a shuffling of the petitioner off to another agency.

17. This proceeding arose for one and only one reason, i.e. because the respondent improperly denied petitioner's application.

18. The decision of the petitioner to avoid an application to the Zoning Board of Appeals was hardly an act of bad faith but rather a judgement on its part. When the respondent denied its application (for a host of reasons), the petitioner, and not the respondent, had the right to choose whether to take the course of action suggested by the respondent or to challenge the respondent's decision. The petitioner chose the latter.

19. This Court is entirely capable of reviewing the correctness or incorrectness of the interpretation of the zoning ordinance made by the respondent in this proceeding and by which it concluded that petitioners needed a variance of lot width.

WHEREFORE, your deponent respectfully requests that the motion by respondent for dismissal be denied and that the petitioner have the relief requested in its petition, verified the 2nd day of June, 1988 and heretofore filed herein.


Alan S. Lipman

Sworn to before me this
19th day of September, 1989.


Notary Public

\\MARGARET\\WNSDR2.AFF

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

.....X

In the Matter of the Application

of

WINDSOR COUNSELING GROUP,

Petitioner,

- against -

THE PLANNING BOARD OF THE TOWN OF,
NEW WINDSOR, NEW YORK,

Respondent.

SUR-REPLY
AFFIDAVIT

Index No. 3608-89

Name of Assigned
Judge: Hon. Peter
C. Patsalos

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989..

.....X

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

ALAN S. LIPMAN, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice
before the Courts of the State of New York, maintaining offices at
One Harriman Square, Goshen, New York.

2. I am the attorney for the petitioner in the above
entitled proceeding. I am fully familiar with the facts and
circumstances herein.

3. I make this sur-reply affidavit in response to new
material submitted to this Court by Mr. Lucia, in his affidavit of
August 17, 1989.

4. I cannot quite fathom the position of Mr. Lucia, who
constitutes the only voice of the respondent in this proceeding.
He has no personal knowledge of the facts as they unfolded before

the Zoning Board of Appeals of the Town of New Windsor several years ago, nor does he have personal knowledge of the events that took place before the respondent.

5. The issue raised by Mr. Lucia of the zone classification of the petitioner's premises, is new to this proceeding. The decision which the petitioner seeks to review does not involve a question or issue related to the zoning district in which the premises are situated. The denial of site plan approval by the respondent, was not made because the premises were zoned R-4, but rather for reasons related to the respondents perceived notion that the premises of the petitioner did not satisfy some of the bulk or area requirements of the NC zone.

6. Once the appeal from the February 13, 1987 decision of the Honorable Peter C. Patsalos (annexed hereto as Exhibit "A") was dismissed by the Appellate Division, Second Department on June 22, 1988 (copy annexed hereto as Exhibit "B"), the zone classification of the premises was not raised as an issue before the respondent in the proceedings before it, in its deliberations or in its decision.

7. The issue of the zoning district in which the premises lie, is not before this Court as it is not part of the decision which the petitioners seek to review, nor may Mr. Lucia make it an issue at this stage of the proceedings, when there is no decision which has stood the test of Court review, by which the premises were determined to be zoned anything but NC.

8. It is true that pursuant to the decision of Judge

Patsalos (Exhibit "A"), I wrote to the Zoning Board of Appeals on February 19, 1987 and asked that this matter be placed on its agenda at the earliest opportunity. The Zoning Board of Appeals chose not to do so. Is the petitioner now to be penalized because the Zoning Board of Appeals, Mr. Lucia's client, has refused or failed to perform the duties which the Court enjoined upon it? And what findings can that agency make in the face of Judge Patsalos' decision (Exhibit "A") except to determine that the premises are zoned NC?

9. Nor is the zoning district in which the premises lie even an issue of law which may be addressed in a motion pursuant to CPLR §7804(f). The grounds for this motion, were simply that the petitioner sought to review a non-final determination, that the petitioner did not exhaust its administrative remedies and that the application did not appear to be made in good faith for a legitimate and proper object. As specious as those grounds may be in the context of this proceeding, they do not include a question about the zoning district.

10. The type of issues which may be raised by CPLR §7804(f) are the same kinds of issues that would be appropriate pursuant to CPLR Rule 3211, i.e., that there are no issues of fact but only issues of law which are entirely resolved in favor of the respondent. On the other hand, if there are issues of law and fact, or only questions of fact, dismissal is inappropriate.

11. The only individual who has raised an issue with respect to the zone classification of the petitioner's premises,

is Mr. Lucia. The respondent had no problem with zoning and the Zoning Board of Appeals appears not to have had that problem, or otherwise it would have performed the duties enjoined upon it by the Court after February 19, 1987.

12. This issue is a ruse calculated only to delay or prevent the review by this Court of the absolute shenanigans performed by the respondent in this proceeding.

WHEREFORE, your deponent respectfully requests that the motion by respondent for dismissal be denied and that the petitioner have the relief request in its petition, verified the 2nd day of June, 1988, and heretofore filed herein.


Alan S. Lipman

Sworn to before me this

31st day of August, 1989


Notary Public

BARBARA LEIN
Notary Public, State of New York
No. 4914949
Qualified in Orange County
Term Expires Dec. 21, 1991

\BARBARA\WDSRASL4.REP

SPECIAL TERM PART—ORANGE COUNTY

Present: HON. PETER C. PATSALOS

SUPREME COURT: ORANGE COUNTY Justice.

In the Matter of the Application of
WINDSOR COUNSELING GROUP, Petitioner,
- against -

THE ZONING BOARD OF APPEALS OF THE TOWN OF
NEW WINDSOR, NEW YORK, Respondent,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules, Reversing a
Certain Decision Adopted by Respondent on
September 22, 1986, and Determining that the
Premises of the Petitioner, Designated as
Section 19, Block 4, Lot 58, on the Tax Maps
of the Town of New Windsor, New York, are
located in an N.C. Zoning District.

To commence the statutory time
period for appeals as of right
(C.P.L.R. 5513 a), you are
advised to serve a copy of this
order, with notice of entry, upon
all parties.

INDEX
NUMBER 6701 19 86
MOTION January 29 87
DATE 19
MOTION
CAL NUMBER
TRIAL
CAL NUMBER

The following papers numbered 1 to 10 read on this motion petition pursuant to CPLR
Article 78 to inter alia annul a decision of respondent Zoning Board of
Appeals.

	PAPERS NUMBERED
Petition/Petitioner	1-3
Notice of Motion/Order to Show Cause—Affidavits	4-5
Answering Affidavits Answer	6-7
Replying Affidavits	8
Sur-Reply Affidavits	
Filed Papers	
Pleadings—Exhibits—Stipulations—Minutes	9-10
Briefs: Plaintiffs/Petitioner's Defendant's/Respondent's	

Upon the foregoing papers it is ORDERED that this motion petition is disposed of as
follows:

In light of the undisputed location of the existing zone district
boundaries, the unrefuted evidence that these boundaries run "diagonally
across the [petitioner's] property" and the existing rules for "determining
the boundaries of districts shown on the [zoning] map", the Court concludes
that the alleged "findings of fact" contained in respondent's decision dated
September 22, 1986 lack any basis in fact and that the subject decision in-
terpreting the zoning map to include the subject property within the R-4
zone was arbitrary, capricious and unsupported by the evidence (see, CPLR
Article 78; Matter of County of Nassau v State of New York Public Employment
Relations Bd., 103 AD2d 274).

Accordingly, the decision of the respondent Zoning Board of Appeals
must be annulled and the matter remitted to the respondent Board for proper
findings of fact and a determination in accordance herewith (see, Matter of
Furey v County of Suffolk, 105 AD2d 41).

The foregoing constitutes the decision and order of the Court.

Dated February 13, 1987 Entered Peter C. Patsalos
Hon. Peter C. Patsalos J.S.C.

Index No. 6701/86
Windsor Counseling v Zoning Board, et al

Page Two

TO: ✓ FABRICANT, LIPMAN & STERN, ESQS.
Attorneys for Petitioner
One Harriman Square, P.O. Box 60
Goshen, New York 10924

FINKELSTEIN, KAPLAN, LEVINE, GITTELSON & TETENBAUM, PC
Attorneys for Respondent
436 Robinson Avenue
Newburgh, New York 12550

COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

0151Z
P/nl

Dated - June 23, 1988

GUY J. MANGANO, J.P.
RICHARD A. BROWN
CHARLES B. LAWRENCE
STANLEY HARWOOD, JJ.

Motion Nos. 4374 & 4377

DECISION AND ORDER

In the Matter of Windsor Counseling
Group, respondent, v The Zoning Board of
Appeals of the Town of New Windsor,
New York, appellant.

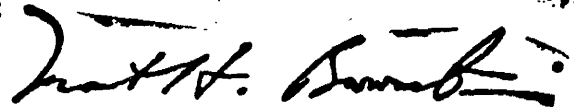
Motion by respondent to dismiss appeal from an order of
the Supreme Court, Orange County, entered March 2, 1987; and cross
motion by appellant to enlarge time to perfect said appeal.

Upon the papers filed in support of the motion and cross
motion and the papers filed in opposition thereto, it is

ORDERED that the motion to dismiss the appeal is granted.

Cross motion to enlarge time denied.

ENTER:



MARTIN H. BROWNSTEIN
Clerk

June 23, 1988

IN RE WINDSOR COUNSELING GROUP Mot.Nos. 4374
v BD APPEALS TOWN OF WINDSOR, NY & 4377

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE**

In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

-against-

**THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,**

Respondent.

Index No. 3608-89

**IAS JUSTICE: HON.
PETER C. PATSALOS,
J.S.C.**

**RESPONDENT'S
SECOND SUR-REPLY
AFFIDAVIT**

**For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.**

STATE OF NEW YORK

ss:

COUNTY OF ORANGE

DANIEL S. LUCIA, being duly sworn, deposes and says:

**1. I am an attorney at law, duly admitted to practice
in the Courts of the State of New York, and I am the attorney for
the respondent in the above entitled proceeding.**

**2. I make this affidavit in sur-reply to the sur-reply
affidavit of Alan S. Lipman, Esq., sworn to on August 5, 1989, and
in further support of respondent's motion, pursuant to CPLR
7804 (f), to dismiss the petition as a matter of law on the**

ground that said petition fails to state facts sufficient to entitle the petitioner to the relief sought therein, to wit, (1) petitioner seeks review of a non-final determination, (2) petitioner has not exhausted his administrative remedies, and (3) the application does not appear to be made in good faith for a legitimate and proper object.

3. Mr. Lipman concludes in his sur-reply affidavit, sworn to on August 5, 1989, that, following this Court's decision of February 13, 1987 in the prior Article 78 proceeding brought by the petitioner against the Zoning Board of Appeals (hereinafter "ZBA"), "With no significance to the Zoning Board of Appeals' decision of September 22, 1986, the petitioner's premises are zoned N-C." I am not sure that Mr. Lipman is warranted in drawing that conclusion.

4. The February 13, 1987 Decision and Order of this Court clearly remitted the matter back to the ZBA "for proper findings of fact and a determination in accordance herewith". Mr. Lipman forwarded a copy of said Decision and Order to the ZBA Secretary with his cover letter of February 19, 1987, a copy of which is annexed hereto as Exhibit "A". I presume that Mr. Lipman requested that the matter be placed on the ZBA agenda in order that the ZBA could make such findings of fact and determination. Thus, at this point in time, it does not appear

that Mr. Lipman was as confident that the premises were zoned NC as he now appears.

5. The February 13, 1987 Decision and Order of this Court was appealed by the ZBA. Apparently due to some misunderstanding between the appellate printer and the then-ZBA attorney, Joseph P. Rones, Esq., the briefs were not timely served and filed. Ultimately said appeal was dismissed. In the confusion engendered by the unperfected appeal, and a subsequent change in ZBA attorneys, it does not appear that the ZBA ever placed the petitioner's request for interpretation back on its agenda. Nor does it appear that Mr. Lipman pursued the matter of being placed on the ZBA agenda again after his February 19, 1987 letter. Consequently the necessary findings of fact and determination have never been made by the ZBA.

6. Until the ZBA makes said findings of fact and determination, I do not believe that Mr. Lipman is warranted in concluding that the premises are zoned NC. It is true that the September 22, 1986 Decision of the ZBA was annulled, but the matter was remitted to the ZBA for proper findings of fact and a determination in accordance with the February 13, 1987 Decision and Order of this Court.

7. Mr. Lipman's conclusion that the premises are zoned

NC cannot be a substitute for the ZBA making the findings of fact and determination upon the remittitur by this Court. Those findings of fact by the ZBA remain as a necessary prerequisite to the determination by the ZBA of the zoning district in which the subject premises lie. This Court remitted the matter to the ZBA specifically for the findings of fact and determination. The ZBA must act upon this remittitur.

8. When this matter first appeared on the respondent's agenda on November 18, 1987, while the February 13, 1987 Decision and Order of this Court was still on appeal, Mr. Rones advised the respondent as follows:

Mr. Rones: First of all the site plan process may take some time, they often do. As far as I can see, any decision that you make concerning the site plan can be subject to whatever happens with respect to when it is zoned, what the zone is if the ultimate determination is that it is in the residential zone as opposed to the commercial zone then there can be some contingency built in that the site plan doesn't have to be built out until that is determined so they don't spend money for nothing. But it probably would be useful to get the review process going and get some dialogue going as far as the neighborhood is concerned to see how the impact of this use can be minimized in the area. When the matter was before the Zoning Board there were a number of neighbors here who had a lot of concerns about screening, traffic and other things so it is a matter that I don't think it would hurt to try to develop those issues and see if something can be worked out for good use of the property. It is really hard to say what the result in the court is going to be and one of the most more likely results is that it is going to wind up back in the Zoning Board of Appeals again for further proceedings.

Although the appeal was not timely perfected, and thus dismissed, the matter still had to go back to the ZBA for the findings of fact and determination.

9. The next time this matter appeared on the respondent's agenda, on May 25, 1988, the Planning Board Engineer, Mark J. Edsall, P.E., submitted his Review Comments of the same date, a copy of which is annexed hereto as Exhibit "B". The following comment is relevant:

2. The Board may wish to verify that the subject property is located within the NC Zone. If so, the site plan complies with all minimum requirements of the Bulk Table, with the exception of the provided lot width.

10. Mr. Lipman does not provide this Court with the date on which the appeal was dismissed although he argues that at no time after the dismissal was the issue of the zone ever raised in proceedings before the respondent. My review of the files in this matter does not disclose any date of dismissal. However, for purposes of argument, I will assume that the first two times this matter appeared on the respondent's agenda, November 18, 1987 and May 25, 1988, were before that dismissal. I also will assume that the appeal was dismissed by the fourth time this matter appeared on the respondent's agenda on January 25, 1989. Mr. Edsall's Review Comments of that date, a copy of

which is annexed hereto as Exhibit "C", include the following:

4. A review of the bulk information for the site plan indicates that the site is presumed within the NC Zone. If so, a variance will be required for lot width.

11. Thus it appears that, for purposes of the petitioner's application, the respondent may have presumed that the premises were zoned NC in order to proceed with the site plan process. This would be in accordance with the initial advice Mr. Rones gave the respondent on November 18, 1987, i.e. that it would be useful to get the review process going and any decision with respect to the site plan would be subject to the ultimate determination of the zone in which it is located. In addition, Mr. Rones correctly anticipated that one of the more likely results would be that the matter would come back to the ZBA for further proceedings.

12. Mr. Lipman's assertion that the respondent was not anxious to consider this application before the appeal was dismissed, but showed no reluctance to entertain it after the dismissal of the appeal, because, he says, the property was effectively zoned NC, seems plausible but is unsupported by the record. An examination of the minutes of the November 18, 1987 meeting, the first time petitioner's application appeared on the respondent's agenda, does indicate that the respondent board members preferred to await the outcome of the appeal before

proceeding further in the site plan approval process. However, the second time this matter appeared on the respondent's agenda, May 25, 1988, the appeal had not been dismissed but Mr. Ronen advised the respondent

But at this point, due to the amount of time that has gone by and the pressure that they have had through the local justice court, it would be appropriate to get the site plan review process going.

And the respondent did proceed with the site plan review, even before the dismissal of the appeal.

13. Before this matter is subjected to judicial review on an Article 78 proceeding, the ZBA should make the necessary findings of fact and determination of the zone in which the subject premises lie, the ZBA should be given the opportunity to decide the interpretation question of whether petitioner's building is entitled to the nonconforming building status of Zoning Local Law 48-25, the ZBA should determine the inadequate lot width issue referred to it by the respondent, and, finally, the respondent should hold a public hearing and then exercise its discretion to approve or disapprove the site plan.

WHEREFORE, deponent respectfully prays for an Order dismissing the petition as a matter of law, together with costs and disbursements, or in the alternative, if the instant motion is denied, permitting the respondent to answer the petition, such

answer to be served and filed within 14 days after service of the order with notice of entry, and for such other, further and different relief as to this Court may seem just, proper and equitable.

LSI
Daniel S. Lucia

Sworn to before me this
17th day of August, 1989.

SI
Notary Public

ELIZABETH M. BACKER
NOTARY PUBLIC, State of New York
Qualified in Orange County
Reg. No. 4502858
Commission Expires March 30, 1991

LAW OFFICES
FABRICANT, LIPMAN & STERN
ONE HARRIMAN SQUARE
POST OFFICE BOX 60
GOSHEN, NEW YORK 10924

Rec'd. & Filed
2BA - 2/23/87.
2BA Member
PAB.

HERBERT J. FABRICANT
ALAN S. LIPMAN
MARK D. STERN
—
VALERIE PULVER

914-294-7944

February 19, 1987

Ms. Patricia Delio, Secretary
Zoning Board of Appeals of the
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550

Re: Windsor Counseling vs. Zoning Board of
Appeals of the Town of New Windsor

Dear Ms. Delio:

I enclose to you herewith a copy of the decision and order
of the Honorable Peter C. Patsalos in the captioned matter.

You may wish to discuss the contents of the enclosure
with your attorney, but I would like this matter placed on the agenda
of the Zoning Board of Appeals at the earliest opportunity and would
like to be advised in advance of the date and hour at which the
subject will be discussed by the Board so I can be present.

Please give this matter your prompt attention.

Very truly yours,



ALAN S. LIPMAN

ASL/bek
Enclosure

c/c The Windsor Counseling Group
194 A Quassaick Avenue
New Windsor, New York 12550



McGOEY and HAUSER
CONSULTING ENGINEERS P.C.

45 QUASSAICK AVE. (ROUTE 9W)
NEW WINDSOR, NEW YORK 12550

TELEPHONE (914) 562-8640
PORT JERVIS (914) 856-5600

RICHARD D. McGOEY, P.E.
WILLIAM J. HAUSER, P.E.
MARK J. EDSALL, P.E.
Associate

Licensed in New York,
New Jersey and Pennsylvania

TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: WINDSOR COUNSELLING GROUP
PROJECT LOCATION: OFF ROUTE 94 (NEAR DORAL DRIVE)
PROJECT NUMBER: 87-53
DATE: 25 MAY 1988

1. The Applicant has submitted a site plan for review for a business and professional office use of an existing one-story building. The plan was previously reviewed at the 18 November 1987 Planning Board Meeting.

2. The Board may wish to verify that the subject property is located within the NC Zone. If so, the site plan complies with all minimum requirements of the Bulk Table, with the exception of the provided lot width.

3. The issue of legal access by right-of-way to the subject property should be demonstrated to the satisfaction of the Planning Board Attorney.

4. The number of required parking spaces for the site is a total of eight (8) spaces. The plan indicates a total of nine (9) spaces are provided; however, I can only see seven (7) on the plan. Therefore, an additional space is required for compliance with the Town Code.

5. The handicapped space shown on the plan is not of sufficient size.

6. The sign detail does not indicate the manner in which the sign is mounted on the property.

7. The light detail does not give information with regard to the height of the unit and lighting area. It should be verified that the lighting curve of the unit does not result in a nuisance to adjoining residential lots.

8. The Planning Board Chairman should verify that a Proxy Statement has been filed regarding this project.

9. The Board may wish to take action to assume the position of Lead Agency under the SEQRA review process.


TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: WINDSOR COUNSELLING GROUP
PROJECT LOCATION: OFF ROUTE 94 (NEAR DORAL DRIVE)
PROJECT NUMBER: 87-53
DATE: 25 MAY 1988

-2-

10. The Planning Board should determine if a Public Hearing will be necessary for this site plan per discretionary judgment under Paragraph 48-19.C of the Town Zoning Ordinance.

Respectfully submitted,


Mark J. Edsall, P.E.
Planning Board Engineer

MJE.emj

windsoremj



**McGOEY, HAUSER and EDSALL
CONSULTING ENGINEERS P.C.**

45 QUASSAICK AVE. (ROUTE 9W)
NEW WINDSOR, NEW YORK 12550

TELEPHONE (914) 562-8640
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RICHARD D. McGOEY, P.E.
WILLIAM J. HAUSER, P.E.
MARK J. EDSALL, P.E.

Licensed in New York,
New Jersey and Pennsylvania

**TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS**

PROJECT NAME: Windsor Counseling
PROJECT LOCATION: Off Route 94 (near Doral Drive)
PROJECT NUMBER: 87-53
DATE: 25 January 1989

1. The Applicant has submitted a plan for a business and professional office use of an existing one-story building. The plan was previously reviewed at the 18 November 1987, 25 May 1988 and 8 June 1988 Planning Board Meetings.

2. My previous concerns with regard to this site involve (at minimum) the parking, sign detail and site lighting. Additional comments in this regard are listed individually hereinbelow.

3. With regard to the latest configuration for parking on this site, I have the following concerns:

- a. The ordinance provides for one space per 200 square foot of floor area. It is my interpretation that this is total floor area, including storage areas. Inasmuch as the existing garage area can be understood as a portion of the building floor area (and could be used as storage space), it is my opinion that a minimum of ten (10) spaces are required, not 7.66.
- b. Eight (8) parking spaces are shown in front of the existing office. The configuration appears acceptable. Is this parking area to be totally paved?
- c. The plan indicates the additional four (4) parking spaces in the rear of the existing building will be accessed by a 12' driveway. Is this wide enough for two-way traffic?
- d. The Board should note that no pedestrian walkway exists from the rear parking spaces to the building entrance. Is this a dangerous situation?

TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: Windsor Counseling
PROJECT LOCATION: Off Route 94 (near Doral Drive)
PROJECT NUMBER: 87-53
DATE: 25 January 1989

-2-

- e. Section 48-16, Subsections A(9), D(1) and D(2) require specific items for parking lots split between zones or adjoining residential zones. It appears that this plan does not comply with these sections of the Town Code.
 - f. Has the Fire Inspector's office agreed to this parking layout, which restricts access to the front of the building?
4. A review of the bulk information for the site plan indicates that the site is presumed within the NC Zone. If so, a variance will be required for lot width.
5. The plan indicates that side yard setbacks exists as 16.5' and 18.5'; when scaling dimensions from the plan, these dimensions do not result. These side yard setback dimensions should be field confirmed since, if the scaled dimensions are correct, a variance is required.
6. It appears from the plan that the existing shared gravel drive is to be paved for the first 300'. Has a maintenance agreement been reached regarding the ultimate maintenance of this road?
7. A review of the plan indicates that only one (1) site lighting fixture is to be provided. Is this enough lighting for the entire site, including the rear parking area?
8. Paragraph A(5) of Section 48-16 requires that all parking areas be properly drained. The Applicant should indicate whether this increased paved parking area will have any negative effects on adjoining residential lots.
9. The Board should note that at the 8 June 1988 Planning Board Meeting, it was determined that a Public Hearing should be held for this project. The Board may wish to consider the scheduling of such Public Hearing.
10. The Applicant has submitted a Short Environmental Assessment Form for this project. The Board may wish to consider taking the Lead Agency position under the SEQRA review process.

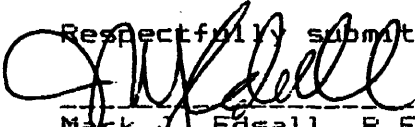
TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: Windsor Counseling
PROJECT LOCATION: Off Route 94 (near Doral Drive)
PROJECT NUMBER: 87-53
DATE: 25 January 1989

-3-

11. At such time that the Planning Board has reviewed the items of concern listed above, further engineering review can be made for this project, if deemed necessary by the Board.

Respectfully submitted,



Mark J. Edsall, P.E.
Planning Board Engineer

MJEnje

87-53

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

.....X

In the Matter of the Application

of

WINDSOR COUNSELING GROUP,

Petitioner,

- against -

THE ZONING BOARD OF APPEALS OF THE,
TOWN OF NEW WINDSOR, NEW YORK,

Respondent,

AFFIDAVIT
IN
OPPOSITION

Index No. 3608-89

IAS Justice: HON.
PETER C. PATSALOS,
J.S.C.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by the Respondent
on March 8, 1989, Denying the Application of
the Petitioner for Site Plan Approval for
Professional Offices for its Premises Desig-
nated as Section 19, Block 4, Lot 58 on the
Tax Maps of the Town of New Windsor, New York.

.....X

STATE OF NEW YORK)
) ss.:
COUNTY OF ORANGE)

ALAN S. LIPMAN, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice
before the Courts of the State of New York, maintaining offices at
One Harriman Square, Goshen, New York.

2. I am the attorney for the petitioner in the above
entitled proceeding. I am fully familiar with the facts and
circumstances herein.

3. This is a proceeding commenced under Article 78 of
the CPLR, to review and reverse a decision adopted by the
respondent Planning Board on April 26, 1989, by which it denied

site plan approval of a plan to utilize for office purposes, certain premises designated as Section 19, Block 4, Lot 58, as shown on the Tax Maps of the Town of New Windsor, New York.

4. In response to the petition (and the accompanying affidavit and multitude of exhibits), the respondent moves pursuant to CPLR 7804(f), to dismiss the Petition as a matter of law. The movant argues three (3) different grounds: (1) The petitioner seeks to review a non-final determination; (2) The petitioner has not exhausted its administrative remedies; and (3) The application does not appear to be made in good faith for a legitimate and proper object.

THE "NON-FINAL" DETERMINATION

5. In his moving affidavit (sworn to on July 7, 1989), Mr. Lucia suggests that the respondent's decision of April 26, 1989, was not final but "an advisory determination", because petitioner's plan demonstrated a lot with inadequate lot width. He suggests that the decision was nothing more than a referral to the Zoning Board of Appeals. He then describes what, in his view, is a "normal course of events", i.e., that the Zoning Board of Appeals will pass upon the lot width issue either on a variance or in connection with an interpretation and then the matter returns to the respondent for a public hearing. In his view, the April 26, 1989 decision could not have been final.

6. There are several reasons why what Mr. Lucia describes as a "normal course of events" cannot be normal or proper or lawful under any circumstances. To begin with on April 26,

1989, the respondent denied the petitioner's application for several reasons, and if there is any doubt about that, the court should look at the dialogue that occurred that evening at the time of the decision, between the members of the respondent and their attorney:

Mr. VanLeeuwen: The reason for turning him down is he has residents living in there. I made a motion to approve the Windsor Counseling site plan.

Mr. McCarville: I will second that motion.

ROLL CALL:

Mr. McCarville	No
Mr. VanLeeuwen	No
Mr. Soukup	No
Mr. Jones	No
Mr. Lander	No
Mr. Schiefer	No

Mr. VanLeeuwen: Reasons for turning him down, there is, there seems to be inadequate lot width. There is improvements made to the site without site plan approval and there is somebody living on the premises which was never disclosed to the Planning Board.

Mr. Soukup: I believe that the ordinance requires square footage for living and square footage for office and the building doesn't meet those requirements.

Mr. McCarville: The fact that they never really upgraded that driveway coming in there.

Mr. VanLeeuwen: It is not clear whether the current private road law allows for commercial uses off of them.

Mr. McCarville: We question the safety of utilizing the private road for the purpose intended.

Mr. Roness: For the intensity of the use and does the Planning Board also refer this matter to the Zoning Board of Appeals.

Mr. VanLeeuwen: Yes, with a negative outcome.
(emphasis supplied)

7. The Court can readily see that there were no less than four (4) reasons for the adoption of that decision: (1) inadequacy of the private road; (2) improvements made to the site without site plan approval; (3) occupancy of the premises by a resident; and (4) inadequate lot width. Indeed the referral to the Zoning Board of Appeals was the last afterthought.

8. Although it is true that from my perspective, denial of an application should occur by the adoption of a motion to deny. This Board (and others like it) seem to prefer the denial of a motion to approve, when they deny an application. However, what I think makes very little difference, - rather it is what the respondent knowingly did. The record could not be clearer. The respondent intended to and did disapprove petitioner's application for site plan approval.

9. Annexed to Mr. Lucia's July 7, 1989 affidavit as Exhibit "A", is a copy of Section 48-19 of the Code of the Town of New Windsor, New York. I refer the Court to Section 48-19 C.6, which provides as follows:

"The Board shall act to approve or disapprove any such site plan within ninety (90) days after the meeting at which the same is submitted. . . . Disapproval shall include written findings upon any site plan element found contrary to the provisions or intent of this local law." (emphasis supplied)

10. Similarly, the provisions of Town Law Section 274-a, subdivision 2, permit a Planning Board in acting upon an

application for site plan approval, to decide the same. No procedure exists under the Code of the Town of New Windsor or the provisions of the Town Law Section 274-a, by which a Planning Board may partially deny or disapprove or "refer" a matter to the Zoning Board of Appeals. The regulations of the Town of New Windsor require the respondent to approve or disapprove petitioner's application.

11. It is clear that some determination was made on April 26, 1989. I do not believe Mr. Lucia is suggesting that petitioner's application was approved. And if the application was not approved, then surely it was disapproved as that was the only other action which the respondent was authorized to take. Neither the Town of New Windsor Code nor Town Law §274-a provides for disapprovals that are less than "final". Every disapproval is a "final determination". Any other decision (such as a referral) is beyond the scope of the respondent's authority. Nor, do I believe that a fair reading of the minutes of that meeting can lead anyone to the conclusion that the respondent intended to do anything beyond denying the petitioner's application. Mr. VanLeeuwen twice discussed the reasons for "turning him down". Mr. McCarville questioned the safety of the private road and Mr. Soukup believed that the Town's regulations were violated because of the alleged occupancy of the premises by a resident. All "findings", made without the benefit of the public hearing which the respondent had decided was necessary only two months earlier (although only an optional requirement), - findings adopted outside of the presence

of the petitioner and without an opportunity for the petitioner to be heard.

12. Mr. Lucia suggests that the respondent has not yet exercised its discretion on this application, because it has not conducted a public hearing which, on January 25, 1989, it deemed should be held. On the contrary, I believe that the respondent has abused its discretion by adopting a resolution denying site plan approval, upon grounds that were specious in the context of the contemporaneous Nugent application and decision. A disapproval is no less final, simply because the respondent acted precipitously and foolishly failed to conduct a public hearing, which it had itself determined was necessary.

13. There is no mystery to the respondent's course of conduct and action. The record is replete with comments by various members of the respondent board, that demonstrate absolute prejudice and a predisposition to deny petitioner's application, with or without the conduct of a public hearing and upon any grounds it can find or upon no grounds at all. Conduct and comments so brazen, as to suggest indifference to judicial review.

14. There can be no more final determination than a denial or disapproval and surely it is a disapproval that occurred at the hand of the respondent, on April 26, 1989.

EXHAUSTION OF REMEDIES

15. Mr. Lucia next suggests that this Article 78 proceeding may not now be heard, because the petitioners have not exhausted their administrative remedies. He ignores the language

of Section 274-a, subd. 3, which provides as follows:

"Any person aggrieved by any decision of the planning board or any officer, department, board or bureau of the town, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. . . ." (emphasis supplied)

Under that section the review of any decision of the respondent planning board, by an aggrieved party, is by this court. No review of the respondent's decision, by any other agency (including the Zoning Board of Appeals), is possible or proper.

16. Section 48-33 of the Code of the Town of New Windsor, annexed to Mr. Lucia's affidavit as Exhibit "B", provides the Zoning Board of Appeals with authority to interpret that code

"on appeal from an order. . . or determination made by an administrative official or on request by an official board or agency of the town".

17. Under that section (48-33), petitioner is not even entitled to seek the interpretation of the New Windsor Code (which Mr. Lucia says is the next step in his "normal course of events"), as to whether a variance of lot width is necessary. No order, decision or determination has been made in this proceeding by an administrative official and therefore, none can be appealed by the petitioner. Of course petitioner does not believe that interpretation is necessary or a variance required. Petitioner is satisfied that neither Nugent nor petitioner required a lot width variance, to allow a presently substandard lot (in respect to lot width), to be converted from an existing nonconforming use to a permitted use (such as petitioner's office use). Petitioner

believes that the respondent was correct when it interpreted (or purposely ignored) the code, in the case of Nugent. Petitioner is more than satisfied that the code cannot be interpreted in different ways to suit the preferences of the respondent on nearly identical applications. What's good enough for Nugent is good enough for us. On the other hand, if the respondent believed that interpretation was necessary, the respondent (and not the petitioner) had the capacity to request such an interpretation under the New Windsor Code §48-33A.

18. Any proceedings before the Zoning Board of Appeals at the behest of an applicant such as the petitioner, would be separate and parallel to the proceedings before the respondent. Planning board determinations are not reviewable by the Zoning Board of Appeals and applications to a Zoning Board of Appeals do not and cannot constitute another "remedy" to be exhausted prior to seeking judicial relief from a planning board determination under CPLR Article 78.

GOOD FAITH

19. Mr. Lucia suggests that this application is not made in good faith for a legitimate and proper object and motivated by an ulterior motive, - particularly to avoid an application to the Zoning Board of Appeals of the Town of New Windsor. In this last respect, Mr. Lucia's analysis of my feelings, is partially correct. My experience before the New Windsor Zoning Board of Appeals (in a prior proceeding on behalf of this petitioner), suggests to me that applications to that agency should be avoided, if possible.

I am free to have that opinion and to have it shared by the petitioner, who suffered the abuse of that agency and the consequential fiscal waste of judicial proceedings brought to review and annul its determination (See Exhibit H, annexed to affidavit of Alan S. Lipman, sworn to June 2, 1989). My opinion about the New Windsor Zoning Board of Appeals is not, however, an "ulterior motive", which disqualifies this proceeding, particularly when that agency has no jurisdiction over any issue before this Court, because no rule or regulation, local or statewide, makes that agency's opinion or determination, a necessary prerequisite to the determination of the respondent, which is the subject of this review.

20. This court is entirely capable of reviewing the particular provisions of the Town of New Windsor Code, which the petitioner believes have been misconstrued and misinterpreted by the respondent (and not by the Zoning Board of Appeals). That is one of the purposes of this review.

21. The petition and moving affidavit reflect many other considerations, such as arbitrary, capricious, discriminatory and prejudicial conduct, by the respondent and its individual members.

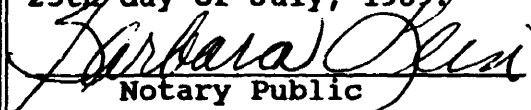
22. The motive of the petitioner in commencing this proceeding is not ulterior. Rather it is clear, uncomplicated and open. Petitioner believes that it is entitled to have its site plan approved by the respondent. Petitioner believes that respondent's disapproval of it's site plan was an arbitrary and capricious act and an abuse of respondent's discretion. The

respondent's conduct of the proceedings before it was sham and shameful. Petitioner would like this court to scrutinize that conduct, - the respondent, understandably, does not look forward to that review.

WHEREFORE, your deponent requests that the respondent's motion under CPLR 7804 (f) be denied and that the petitioners have the relief requested in their petition, verified on the 2nd day of June, 1989, heretofore filed herein.


ALAN S. LIBMAN

Sworn to before me this
25th day of July, 1989.


Notary Public

BARBARA LEIN
Notary Public, State of New York
No. 4914949
Qualified in Orange County
Term Expires Dec. 21, 1999

\MARGARET\ASLWDSR.AFF

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

-against-

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent.

Index No. 3608-89

IAS Justice: HON.
PETER C. PATSALOS,
J.S.C.

RESPONDENT'S
THIRD SUR-REPLY
AFFIDAVIT

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.

STATE OF NEW YORK

ss:

COUNTY OF ORANGE

DANIEL S. LUCIA, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice
in the Courts of the State of New York, and I am the attorney for
the respondent in the above entitled proceeding.

2. I make this affidavit in sur-reply to the (third)
sur-reply affidavit of Alan S. Lipman, Esq., sworn to on August
31, 1989, and in further support of respondent's motion, pursuant
to CPLR 7804 (f), to dismiss the petition as a matter of law on

the ground that said petition fails to state facts sufficient to entitle the petitioner to the relief sought therein, to wit,

- (1) petitioner seeks review of a non-final determination,
- (2) petitioner has not exhausted his administrative remedies, and
- (3) the application does not appear to be made in good faith for a legitimate and proper object.

3. The simple explanation of why my affidavits constitute the only voice of the respondent on this application is that this is a motion to dismiss the petition as a matter of law, pursuant to CPLR 7804 (f). Thus my lack of personal knowledge of the facts is not relevant. On a motion to dismiss the petition, only the petition is considered and the facts stated therein are deemed admitted for purposes of the motion. Mr. Lipman certainly realizes this and his analogy to a motion to dismiss, pursuant to CPLR 3211, is appropriate. The three grounds which are the predicate for this motion are (1) non-final determination, (2) exhaustion of remedies, and (3) good faith.

4. I have never stated that the zone classification for the subject premises, whether R-4 or NC, is an issue which should be argued in this proceeding. I have argued that the zone classification is one of a number of issues which must be

determined by the Zoning Board of Appeals (hereinafter "ZBA") before the respondent will be in a position to make a final decision to approve or disapprove the petitioner's site plan. Thus, this matter should not be subject to a premature review on an Article 78 proceeding until the respondent has made a final decision.

5. Since the ZBA has not made the necessary findings of fact and determination of the zoning district in which the premises lie, any determination by the respondent on the petitioner's site plan application is non-final. The site plan approval or disapproval necessarily must be predicated upon the district in which the premises lie. Quoting, once again, from the advice given by Joseph P. Rones, Esq., the respondent's attorney, to the respondent, at its November 18, 1987 meeting:

Mr. Rones: . . . As far as I can see, any decision that you make concerning the site plan can be subject to whatever happens with respect to when it is zoned, what the zone is if the ultimate determination is that it is in the residential zone as opposed to the commercial zone then there can be some contingency built in that the site plan doesn't have to be built out until that is determined so they don't spend money for nothing. . . .

The fact that the zone classification has not been determined by the ZBA relates to the issue of good faith, as well as to non-final

determination. As we have argued previously, the petitioner's lack of good faith is demonstrated by the admission that it does not want to appear before the ZBA again. This proceeding arose because the petitioner did not want to exhaust its administrative remedies by having the ZBA determine the inadequate lot width issue which was referred to the ZBA by the respondent. Additionally, the ZBA is the only body which can decide the interpretation question of whether petitioner's building is entitled to the nonconforming building status of Zoning Local Law 48-25. It is not until these intermediate issues are resolved by the ZBA that the respondent can hold a public hearing and exercise its discretion to approve or disapprove the petitioner's site plan. That will be a final determination by respondent which is subject to review on an Article 78 proceeding.

6. Thus I respectfully submit that the three grounds which are the predicate for this motion--non-final determination, exhaustion of remedies, and good faith--are all issues of law which are resolved in favor of the respondent on this motion. Therefore dismissal of the petition is warranted as a matter of law.

7. Notwithstanding Mr. Lipman's inflammatory rhetoric, the issues raised on this motion to dismiss are real legal issues

which warrant dismissal of the petition. They certainly are not a ruse.

8. The respondent desires nothing more than the opportunity to do its job, and exercise its discretion to approve or disapprove the petitioner's site plan, and make a final determination thereon. But first, there are intermediate issues which must be determined by the ZBA. Such determination by the ZBA is a prerequisite to final determination by the respondent. Once the respondent makes its final determination, it invites, even welcomes, judicial review on an Article 78 proceeding if the petitioner still feels aggrieved.

WHEREFORE, deponent respectfully prays for an Order dismissing the petition as a matter of law, together with costs and disbursements, or in the alternative, if the instant motion is denied, permitting the respondent to answer the petition, such answer to be served and filed within 14 days after service of the order with notice of entry, and for such other, further and different relief as to this Court may seem just, proper and equitable.

151

Daniel S. Lucia

Sworn to before me this

8th day of September, 1989.


Notary Public

- 5 -

BLANDY M. BACKER
Notary Public, State of New York
Qualified in Orange County
Exp. No. 428858
Qualification Expires March 30, 1991

SHORT ORDER FORM

To commence the statutory time period for appeals as of right (CPLR 5513 [2]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT - STATE OF NEW YORK
COUNTY OF ORANGE

PRESENT: HON. DONALD N. SILVERMAN
ACTING J.S.C.

FILED
AND
ENTERED

ON 1990

ORANGE
COUNTY CLERK

-----X
In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

INDEX NO.
3608/89

- against -

MOTION DATE & NO.
7/17/89

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK

Respondents.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules,
Reversing a Certain Decision Adopted by
Respondent on April 26, 1989.

-----X
The following papers numbered 1 to 259 comprise this motion to dismiss the instant petition commencing a special proceeding. The special proceeding is brought pursuant to CPLR Article 78. It challenges Respondent's April 26, 1989 decision and May 16, 1989 notice of disapproval of site plan application, as arbitrary, capricious, abusive of discretion and lacking the support of credible evidence. Respondent has moved to dismiss, contending non-finality of the decision, failure to exhaust administrative remedies and lack of good faith for a legitimate and proper object.

Papers Numbered

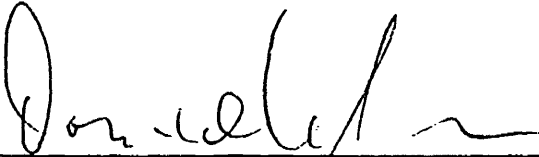
PETITION	1-106
MOTION TO DISMISS/EXHIBITS	107-171
ANSWERING AFFIDAVITS	172-181
REPLYING AFFIDAVITS	182-196
SUR-REPLY AFFIDAVITS (4 sets)	197-259

The Court finds that Respondent's decision of April 26, 1989, was a final decision from which Petitioner may properly bring this Article 78 proceeding (Matter of Martin v. Ronan, 44 N.Y.2d 374 (1978); Matter of Edmead v. McGuire, 67 N.Y.2d 714 (1986)).

Respondent's motion to dismiss is therefore denied.
Respondent is directed to provide answering papers and certified
return by January 31, 1990.

So Ordered.

Dated: January 8, 1990



HON. DONALD N. SILVERMAN
ACTING SUPREME COURT JUSTICE

FABRICANT & LIPMAN
Attn: Alan S. Lipman, Esq.
One Harriman Square
Goshen, New York 10924

DANIEL S. LUCIA, ESQ.
Temple Hill Road
RD #2
New Windsor, New York 12550

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

.....X

In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

- against -

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent.

STIPULATION OF
SETTLEMENT AND
DISCONTINUANCE

Index No. 3608/89

Name of Assigned
Judge: Hon. Donald
N. Silverman,
Acting J.S.C.

For a Judgement Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.

.....X

WHEREAS, petitioner is the owner of certain premises
located at 194A Quassaick Avenue in the Town of New Windsor, Orange
County, New York, and designated on the Tax Maps of the Town of New
Windsor as Section 19, Block 4, Lot 58 (hereinafter the "premises").
The premises were acquired by deed dated November 1, 1985, recorded
in the Orange County Clerk's Office in Liber 2435 of Deeds at Page
253 on the 6th day of November, 1985; and

WHEREAS, respondent is the duly appointed Planning Board
of the Town of New Windsor, New York, appointed by the Town Board of
the Town of New Windsor, New York, pursuant to the powers vested in
it by Section 271 of the Town Law; and

WHEREAS, the premises are improved by a structure built in
or about 1983, pursuant to a building permit duly issued by the
Building Inspector of the Town of New Windsor, New York on February
8, 1983, as and for a single-family dwelling; and

WHEREAS, at the time of the acquisition of the premises by petitioner, the same were determined to be zoned neighborhood commercial (NC) by directive of the Hon. Peter C. Patsalos, J.S.C., under a comprehensive zoning ordinance adopted by the Town Board of the Town of New Windsor in or about May 1975 (hereinafter the "1975 Ordinance"); and

WHEREAS, pursuant to the provisions of the 1975 Ordinance, the premises may be used as of right for professional offices, with site development plan review and approval by the respondent under the provisions of Section 48-19 of the 1975 Ordinance; and

WHEREAS, pursuant to the provisions of Section 48-19 of the 1975 Zoning Ordinance, on or about July 15, 1987 petitioner applied to the respondent for site plan approval for the use of the premises for professional offices; and

WHEREAS, on April 26, 1989, the respondent voted to deny site plan approval for reasons related to (a) inadequate lot width; (b) improvements made to the site without site plan approval; and (c) the existence of a secondary residential use within the premises; and

WHEREAS, petitioner commenced the captioned Article 78 proceeding, seeking an order annulling and reversing the aforesaid determination of the respondent Planning Board, dated April 26, 1989, and further determining that the aforesaid premises of petitioner zoned NC do not require a variance for lot width under the provisions of the Town of New Windsor Zoning Ordinance;

NOW, THEREFORE, it is hereby stipulated by and between the parties signatory hereto and their respective attorneys in the above captioned proceeding, that whereas no party hereto is an infant or an incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of this proceeding, the above entitled proceeding is settled and the proceeding discontinued, upon the following terms and conditions:

1. The petitioner shall cause the site plan dated February 10, 1989, heretofore submitted to and denied by the respondent, to be amended in the following respects:

- a. The site plan shall exhibit a 17 foot wide paved road from New York State Route 94 to the "limits of road improvement" as shown on the petitioner's site plan dated February 10, 1989. The pavement shall be specified thereon as one three (3") inch layer of dense binder Type 3 or blacktop, with a base of shale. No gutters need be provided.
- b. The site plan shall show an opaque privacy fence four (4') feet high from the garage to the private entrance road, along the northwest side of the property.
- c. The site plan shall include a legend that the petitioner shall install two "No Parking" signs on the private entrance road, one on each side of such road.
- d. Applicant shall change the exterior light detail to reflect lighting fixtures which direct light downward without glare beyond the property boundaries of the petitioner.
- e. The petitioner shall provide fifteen (15) blacktopped and striped exterior parking spaces (excluding the parking space within the existing garage which is to be converted to office use in accordance herewith).

- f. A note shall be placed upon the plan reflecting that all existing natural screening shall remain, except as necessary to implement the site plan.

2. There shall be no time restrictions for the petitioner's use of exterior lighting nor shall the number of patients and group sizes be restricted by the number of available parking spaces, but patients shall be requested not to park within the private entrance road. During the period of time that the premises continue to be used for the purposes for which site plan approval is to be granted, there shall be no person or persons residing or domiciled at the premises.

3. The area of petitioner's building designated as "garage" on the February 10, 1989 site plan, shall be incorporated into and utilized by petitioner as professional offices. The number of offstreet parking spaces (fifteen) is determined to be adequate to accommodate the use of petitioner's entire structure for professional offices.

4. The petitioner shall execute a general release in favor of all persons involved with the petitioner's application, individually and as members of any Board of the Town of New Windsor, or as office holders of the Town, or as Town employees. The general release shall be held in escrow by Fabricant & Lipman, attorneys for the petitioner, until such time as the petitioner secures a certificate of occupancy.

5. At such time as the aforesaid changes have been made to the petitioner's site plan and submitted to and reviewed by the respondent so as to determine that the amended plan conforms in all

respects to the requirements of this stipulation, the respondent shall grant site plan approval to such amended site plan pursuant to the provisions of Section 48-19 of the 1975 Ordinance.

6. Notwithstanding the discontinuance of this proceeding pursuant hereto, the Supreme Court shall have continuing jurisdiction upon the application of any party to resolve any disputes with respect to the interpretation to be given to any of the provisions hereof and with respect to the performance by the respective parties of their obligations hereunder.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 27th day of March, 1991.

THE PLANNING BOARD OF THE
TOWN OF NEW WINDSOR, NEW YORK

By: Carl Schiefer
Carl Schiefer, Chairman

WINDSOR COUNSELING GROUP

By: _____
Sharon Belinsky,
a Partner

Daniel S. Lucia
Daniel S. Lucia

FABRICANT & LIPMAN, ESQS.

By: _____
Alan S. Lipman

DANIEL S. LUCIA, ESQ.
Attorney for Respondent
Office and P.O. Address
343 Temple Hill Road
New Windsor, New York 12553
Tel.: (914) 561-7700

FABRICANT & LIPMAN, ESQS.
Attorneys for Petitioner
Office and P.O. Address
One Harriman Square
P. O. Box 60
Goshen, New York 10924
Tel.: (914) 294-7944

Dated: White Plains, New York
 , 1991

- 6 -

SHORT ORDER FORM

To commence the statutory time period for appeals as of right (CPLR 5513 [2]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT - STATE OF NEW YORK
COUNTY OF ORANGE

PRESENT: HON. DONALD N. SILVERMAN
ACTING J.S.C.

**FILED
AND
ENTERED**

ON 1990

ORANGE
COUNTY CLERK

-----X
In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

INDEX NO.
3608/89

- against -

MOTION DATE & NO.
7/17/89

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK

Respondents.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules,
Reversing a Certain Decision Adopted by
Respondent on April 26, 1989.

-----X
The following papers numbered 1 to 259 comprise this motion to dismiss the instant petition commencing a special proceeding. The special proceeding is brought pursuant to CPLR Article 78. It challenges Respondent's April 26, 1989 decision and May 16, 1989 notice of disapproval of site plan application, as arbitrary, capricious, abusive of discretion and lacking the support of credible evidence. Respondent has moved to dismiss, contending non-finality of the decision, failure to exhaust administrative remedies and lack of good faith for a legitimate and proper object.

Papers Numbered

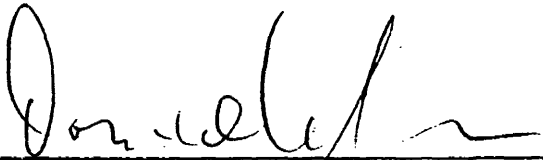
PETITION	1-106
MOTION TO DISMISS/EXHIBITS	107-171
ANSWERING AFFIDAVITS	172-181
REPLYING AFFIDAVITS	182-196
SUR-REPLY AFFIDAVITS (4 sets)	197-259

The Court finds that Respondent's decision of April 26, 1989, was a final decision from which Petitioner may properly bring this Article 78 proceeding (Matter of Martin v. Ronan, 44 N.Y.2d 374 (1978); Matter of Edmead v. McGuire, 67 N.Y.2d 714 (1986)).

Respondent's motion to dismiss is therefore denied.
Respondent is directed to provide answering papers and certified
return by January 31, 1990.

So Ordered.

Dated: January 8, 1990


HON. DONALD N. SILVERMAN
ACTING SUPREME COURT JUSTICE

FABRICANT & LIPMAN
Attn: Alan S. Lipman, Esq.
One Harriman Square
Goshen, New York 10924

DANIEL S. LUCIA, ESQ.
Temple Hill Road
RD #2
New Windsor, New York 12550

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

March 28, 1991

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Carl:

I wish to thank you and the Planning Board for meeting with me on short notice last night in order to have the Stipulation of Settlement and Discontinuance signed so that it can be filed before the Court's April 1, 1991 deadline. I have delivered the Stipulation to Mr. Lipman earlier today so that it can be executed by the petitioner and forwarded to the Court.

I have worked up a chronology of Windsor Counseling Group's application for site plan approval and the Article 78 proceeding in order to facilitate Mark Edsall and Andy Krieger in their review of the applicant's site plan, Rev. 5 of 5/14/90, when the same is presented formally to the Planning Board. I believe that revision incorporates all the mitigation measures required by the Stipulation but I will leave that final determination to them. I enclose a copy of that chronology, and all attachments, for the Planning Board's file; I am providing copies to Mark and Andy with copies of this letter.

When the applicant does come before the Planning Board seeking site plan approval, the following items should be addressed:

- (1) The Planning Board will have to adopt a motion to reverse its two prior motions determining to hold a public hearing on the site plan. Since public hearings are discretionary, I see no problem in the reversal on this issue. For the record, you might want to include a short narrative to the effect that, subsequent to the prior motions to hold a public hearing, the matter was litigated by the applicant. The Planning Board and the applicant agreed upon the addition of a number of mitigation measures as part of the settlement of that litigation and the Planning Board feels that these mitigation measures adequately protect the neighbors and

March 28, 1991

the public. Thus, at this point, a public hearing would be superfluous. In addition, if any more stringent mitigation measures were imposed, it is likely that they would generate further litigation by the applicant on the grounds that they were arbitrary and capricious.

- (2) The SEQRA process should be closed out. To date the Planning Board has taken lead agency status but has not taken any action beyond that.
- (3) The applicant should pay all required fees.

I do not intend the foregoing list to be exhaustive. I leave that to the expertise of Mark and Andy.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Daniel S. Lucia

DSL:rmd
Enclosures

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
(with enclosures)
Mark J. Edsall, P.E.
(with enclosures)

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

BY HAND

March 28, 1991

Alan S. Lipman, Esq.
Fabricant & Lipman
One Harriman Square
P.O. Box 60
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York
Supreme Court, Orange County
Index No. 3608-89

Dear Alan:

I enclose herewith three copies of the Stipulation of Settlement and Discontinuance of the above entitled proceeding which have been executed by Carl Schiefer, Chairman of the respondent Planning Board and by me as the attorney for the respondent. The revisions to the Stipulation, which we discussed by telephone late yesterday, have been incorporated therein.

I would appreciate it if you and your client would execute the enclosed copies of the Stipulation. Please forward the original Stipulation to Hon. Donald N. Silverman, Acting J.S.C., by April 1, 1991, with the request that it be "So Ordered". Please return one fully executed copy of the Stipulation to me; the second copy is for your records.

Thanks for your courtesy and cooperation in resolving this matter.

Very truly yours,

Daniel S. Lucia

DSL:rm
Enclosures
cc: Mr. Carl Schiefer
Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Andrew W. Bilinski, Esq.

CHRONOLOGY: WINDSOR COUNSELING GROUP

APPLICATION FOR SITE PLAN APPROVAL
ARTICLE 78 PROCEEDING

- 11/18/87 Applicant appears before Planning Board (minutes attached)
- 5/25/88 Applicant appears before Planning Board (minutes attached)
- 6/ 8/88 Applicant appears before Planning Board; Planning Board adopts a motion to take lead agency status under SEQRA; Planning Board adopts a motion to hold a public hearing on the site plan (minutes attached)
- 1/25/89 Applicant appears before Planning Board; Planning Board again adopts a motion to hold a public hearing on the site plan; Planning Board again adopts a motion to take lead agency status under SEQRA (minutes attached)
- 3/ 8/89 Planning Board adopts a motion to refer applicant to the ZBA due to insufficient lot width (minutes attached)
- 4/26/89 Planning Board denies a motion to approve the site plan on the grounds of inadequate lot width and refers the applicant to the ZBA (minutes attached)
- 6/ 5/89 Applicant commences an Article 78 proceeding against the Planning Board to annul the Planning Board 4/26/89 decision denying site plan approval and referring the applicant to the ZBA due to inadequate lot width
- 7/17/89 Lucia retained to represent Planning Board and moves to dismiss Article 78 Petition
- 10/ 6/89 Decision/Order denying motion to dismiss; respondent Planning Board directed to submit answer
- 10/17/89 Lucia meets with Planning Board members vanLeeuwen, Lander, and Pagano; Supervisor Green, Attorney for Town Seaman and Planning Board Attorney Rones to develop a settlement proposal and mitigation measures to be required of applicant; Lucia presents this settlement proposal by telephone to Lipman (see attached notes, left column)
- 10/19/89 Lucia receives Lipman's response and counterproposal by telephone (see attached notes, right column)
- 10/25/89 Lucia meets with Planning Board in Executive Session to discuss settlement and a compromise counterproposal is developed (see attached notes, dated 10/25/89, only circled items apply)

- 10/26/89 Lucia advises Lipman by telephone of compromise counter-proposal
- 10/31/89 Lipman makes a further counterproposal by letter (copy attached)
- 11/ 8/89 Lucia meets with Planning Board in Executive Session to discuss Lipman 10/31/89 counterproposal; Planning Board agrees to delete time limitation on exterior lighting (see attached notes, dated 11/8/89, only circled items, as revised, apply)
- 11/ 9/89 Lucia letter to Lipman confirming above (copy attached)
- 11/21/89 Lucia files Notice of Appeal from Decision/Order denying motion to dismiss in order to protect Planning Board's interests while settlement negotiations continue
- 12/ 5/89 Lucia letter to Schiefer regarding problems raised by Lipman concerning 18' wide road (copy attached)
- 12/13/89 Lucia meets with Planning Board in Executive Session regarding road width issue; Planning Board agrees to reduce road width to 17'
- 12/14/89 Lucia letter to Lipman confirming above (copy attached)
- 1/ 2/90 Lipman telephones Lucia to advise that there is a settlement in principle but he needs time to work out to terms of the stipulation and the mechanics of the settlement procedure; thereafter Lucia and Lipman, as well as applicant's architect, Berg, and Building Inspector Babcock engage in extended discussions regarding procedure and Code issues (which are not resolved until 9/21/90)
- 1/ 8/90 Order denying motion to dismiss entered by Court (redundant)
- 1/10/90 Lucia meets with Planning Board in Executive Session and Planning Board determines that the Article 78 proceeding can be settled by a Stipulation which provides that the Planning Board will give site plan approval to applicant's map after it is amended to add mitigation measures agreed upon by the parties
- 2/14/90 Lucia files Notice of Appeal from Order denying motion to dismiss in order to continue to protect Planning Board's interests while awaiting consummation of settlement

- 4/10/90 Code issues apparantly resolved with Building Inspector Babcock but now applicant wants to amend site plan to convert garage into office space and this, in turn, affects parking requirements (see Lucia 4/10/90 letter attached)
- 4/26/90 Lucia receives first draft of proposed Stipulation from Lipman; Lucia thereafter discusses revisions with Lipman
- 4/30/90 Lucia receives revised draft of proposed Stipulation from lipman
- 5/ 9/90 Lucia meets with Planning Board in Executive Session to discuss proposed Stipulation and site plan revisions; Planning Board members agree to the six site plan revisions in the proposed Stipulation (including no increase above 15 parking spaces) to settle the Article 78 proceeding and authorize Lucia to withdraw the pending appeal
- 5/11/90 Lucia withdraws appeal
- 5/30/90 Lucia receives from Lipman the revised site plan, Rev. 5 of 5/14/90, which incorporates the changes required by the Stipulation (copy attached)
- 6/ 1/90 Above site plan forwarded by Lucia to Planning Board
- 10/ 1/90 Lipman advises Lucia that applicant is ready to present site plan to Planning Board
- 10/24/90 Lucia and Lipman appear before Planning Board; applicant does not have sufficient copies of revised site plan to permit review by Planning Board Engineer Edsall and by the Planning Board members; Planning Board determines that Planning Board Attorney Krieger and Planning Board Engineer Edsall should review the revised site plan to be sure that it complies with all mitigation measure's required by the Stipulation (minutes attached)
- 3/18/91 Decision/Order entered by Court requiring respondent Planning Board to submit answering papers by 4/1/91, or allow petitioner to enter judgment
- 3/27/91 Lucia and Lipman agree by telephone on final revisions to Stipulation of Settlement and Discontinuance; Lucia meets with Planning Board in Executive Session to explain said Stipulation and secure execution by Planning Board Chairman Schiefer (copy attached)
- 3/28/91 Lucia delivers Stipulation to Lipman for execution by applicant and filing with the Court before 4/1/91 deadline

11/18/87

This is to certify that this document is a true copy
of same, as filed in my office.

Mr. Mc Carville: I will second that motion.

Signed:

Edith Chantoff
Deputy Town Clerk 11/16/89

MR. VAN LEEUWEN	NAY
MR. SCHIEFER	NAY
MR. MC CARVILLE	NAY
MR. JONES	NAY
MR. LANDER	NAY
MR. SCHEIBLE	NAY

WINDSOR COUNSELING SITE PLAN (87-53)

Mr. Jerry Zimmerman: The property is on Route 94, this property is Dr. Benninger's office.

Mr. Ronas: If I could give you some background on this. After the New Windsor Counseling Group apparently occupied this property I understand they claim they occupied this property under the believe it was in a NC zone. There was a different opinion as to whether or not it was in a residential or commercial zone because the zone boundary runs through the property. They went to the Zoning Board of Appeals for an interpretation as to where the boundary was and if it wasn't in the right spot for a variance and the Zoning Board of Appeals determined that the boundary was so located that it was in a residential zone and they did not give them the variance. There was an appeal by New Windsor Counseling and the Orange County Supreme Court annuled the determination of the Zoning Board and determined that or ordered that it was in a NC zone. that decision is now on appeal and the briefs are expected to be filed by the end of December. A decision probably won't be forthcoming from the Appellate Division until some time in the Spring I would say.

Mr. Jones: Then we can't review the plans then.

Mr. Ronas: The New Windsor Counseling is sort of in a catch 22 situation. They are there and they want to get the ball rolling simultaneously and they probably were directed by the local court to file for the site plan.

Mr. Zimmerman: Through prodding by the building department and Judge Krieger we were ordered to proceed with the site plan whether or not this Board can take any action on the site plan I can't determine that but we are making the application. I just want to expand on what Mr. Ronas has indicated. At that time as he has indicated was an existing building on the site occupied by a Mr. DiLorenzo and the Windsor Counseling Group which was conducting business in the Town of New Windsor under the same name at the location nearby, went through a real estate office and this property was presented to them as being in a commercial district. At the time the attorney representing the Windsor Counseling group Steve Duggan made a phone call to the then Town Engineer who was Mr. Paul Cuomo who reviewed the plan on our behalf and did give us an indication that the property was in a commercial district and based on all of that happening the purchase was made and the Windsor Counseling Group was occupying the property. And they still are just based on that information. Probably about six months after that time or some period after that time the Windsor Counseling Group was served with various notes regarding the status of the zone line and as we have indicated on the map it does cross the property and we have been at the site probably about a year now and the status is as Mr.

Rones has indicated an appeal is taking place by the Zoning Board of Appeals. But in following the directives that we have received proceeded to make an application for the site plan and it is up to I guess your board and perhaps through the advice of your attorney to what action you want to take at this time.

Mr. Van Leeuwen: Can I ask you what the wide line means?

Mr. Zimmerman: That is the zone line.

Mr. Van Leeuwen: That wide?

Mr. Zimmerman: It is a source of confusion but if you do look at the Town of New Windsor zoning map it is drawn to the same scale but on the New Windsor zoning map this line is a lesser width but scale is 100 feet wide, scaling it and it does cross the property in the same way.

Mr. Van Leeuwen: So they are right in a catch 22 situation. What I am more interested in is what are they going to do with the road here.

Mr. Zimmerman: As you know a right of way that serves not only this property but properties to the rear as we have indicated on the map, more recently probably within the last couple of months its been very well maintained. There has been some paving done there and it is more than passable, pot holes have been filled in.

Mr. Van Leeuwen: Who filled them in?

Mr. Zimmerman: I am not sure who did perhaps Dr. Benninger. However New Windsor Counseling Group has made offers to the adjoining property owners and still will do that in any type we have offered to get into some kind of maintenance agreement. We have talked to the adjoining owners directly.

Mr. Van Leeuwen: That is what needs to be done.

Mr. Scheible: How many lots are on the road?

Mr. Zimmerman: What is served off this I don't know how many lots there are but maybe three houses to the rear.

Mr. Van Leeuwen: I think before we should do anything on the situation I think we should have a clarification, get together with the neighbors and get from this point to this point.

Mr. Zimmerman: We have no objection to entering into any kind of an agreement with the other owners on the property. I think this property that is beyond us they started to do some construction there I don't think they have completed building the house they got a building permit I believe.

Mr. Scheible: What I am trying to prevent we don't want to create another situation like we have out in Schwartz Lane, Mc Nary Road, you name it there is dozens of them out there because you are looking at a large size lots that could be subdivided eventually and we don't want to see another private road situation developed here.

Mr. Van Leeuwen: It is only 40 feet there.

Mr. Babcock: Dr. Benninger not too many months ago possibly the end of last year got a site plan approval to extend his existing building he has. One of the agreements that he made is that when for site plan approval that he would join together with all the owners of that property and get a maintenance agreement on that which apparently didn't happen at that time.

Mr. Jones: I imagine he will let somebody else do the work.

Mr. Scheible: I imagine it is because the neighbors don't want to get together.

Mr. Zimmerman: We just couldn't get together with the other people.

Mr. Rones: You couldn't reach an agreement or you couldn't meet.

Mr. Zimmerman: Couldn't reach an agreement.

Mr. Scheible: Does someone own the road?

Mr. Zimmerman: I think Nugent.

Mr. Babcock: It is a private ownership. I don't know the person's name.

Mr. Rones: I think in the minutes of the Zoning Board of Appeals there is an indication of who owns the road.

Mr. Van Leeuwen: I think the people that live in this house I think they own the road.

Mr. Babcock: Favino is the owner's name. It is under a separate tax map number.

Mr. Scheible: I remember we said we Dr. Benninger should go after an agreement on this road he should pursue it but we never said it had to be. I think somewhere along the line we are going to have to say we are going to need a maintenance agreement on this road.

Mr. Van Leeuwen: We agreed with Dr. Benninger because he couldn't get together with the other neighbors and we agreed he'd just fix where his driveway comes up.

Mr. Scheible: But now we are going to go up further.

Mr. Babcock: He last said he'd do his best to get a maintenance agreement and he'd get the road done completely.

Mr. Van Leeuwen: That is the avenue you should take.

Mr. Zimmerman: We will pursue be it by letter to the adjoining owners and we will try to work that out with them. I just want to also convey to the Board this is an existing lot, we are not subdividing and there as an existing building.

Mr. Van Leeuwen: Who built the building?

Mr. Zimmerman: DiLorenzo.

Mr. Van Leeuwen: John?

Mr. Zimmerman: Yes.

Mr. Mc Carville: How old is the building?

Mr. Zimmerman: Four years old. It is a brand new building.

Mr. Van Leeuwen: They got a building permit for a house.

Mr. Babcock: Yes. Pat Kennedy issued a building permit.

Mr. Van Leeuwen: It was an existing lot he built it as a house then he turned around and sold it to the New Windsor Counseling Group and told them they could use it as an office.

Mr. Rones: And unfortunately this was occupied as an office without a site plan for a long time.

Mr. Zimmerman: It was on the advice of the then engineer because his determination was that it was commercial and that it didn't require anything else.

Mr. Rones: It still requires a site plan.

Mr. Zimmerman: We had an attorney check it with the Town we have a letter from Mr. Cuomo indicating that and I can make that part of your record. The Court has determined it is NC.

Mr. Rones: Which decision is on appeal.

Mr. Scheible: What steps should we take now Joe?

Mr. Rones: First of all the site plan process may take some time, they often do. As far as I can see, any decision that you make concerning the site plan can be subject to whatever happens with respect to when it is zoned, what the zone is if the ultimate determination is that it is in the residential zone as opposed to the commercial zone then there can be some contingency built in that the site plan doesn't have to be built out until that is determined so they don't spend money for nothing. But it probably would be useful to get the review process going and get some dialogue going as far as the neighborhood is concerned to see how the impact of this use can be minimized in the area. When the matter was before the Zoning Board there were a number of neighbors here who had a lot of concerns about screening, traffic and other things so it is a matter that I don't think it would hurt to try to develop those issues and see if something can be worked out for good use of the property. It is really hard to say what the result in the court is going to be and one of the most more likely results is that it is going to wind up back in the Zoning Board of Appeals again for further proceedings.

Mr. Van Leeuwen: Are you doing the legal work?

Mr. Rones: Yes.

Mr. Scheible: What I would like to see is get the ball rolling on a maintenance agreement. I can't think of anything else myself right now.

Mr. Babcock: Probably a formality would be getting a proxy statement so that whatever does go on record is useable as far as that it means something that the person was authorized to state it.

Mr. Edsall: I don't know if you want to start the SEQR process.

Mr. Mc Carville: I don't think we should start any process myself they have been operating in violation. They don't have a cease and desist so just let them continue to operate until there is some decision as Joe said in February and then pick the thing up. I don't think as a Board we should approve something that is not tangible.

Mr. Schiefer: I'd hate to have the statement we should let them continue to operate I hate to hear that. We are not going to take any action until we get a decision from the court.

Mr. Mc Carville: It is not for us to take.

Mr. Schiefer: I mean put in the notes let them continue to operate I don't approve of that. I think the best thing they can do is get right of way, get the road maintenance agreement, that can be done. I recommend they just go ahead with the maintenance agreement.

Mr. Scheible: I hate to put too much effort into this which takes up a lot of our valuable time and your time when the whole thing can be closed down and disapproved if it's already been disapproved by the Zoning Board of Appeals they are operating illegally right now so to put that effort into something where there is no end, no light at the end of the tunnel I can't see putting the effort into it myself.

Mr. Zimmerman: Just for your records or information, the court, the last action that has taken place is the court has determined it is an NC district so at this point we are operating at somewhat of a legal basis at least in the correct zone but be it as it may. Just so the Board understands we did follow the guidelines we had talked to the right people, unfortunately maybe the way the line is it doesn't come out in our favor. We are spending a lot of money getting this resolved. You want us to work on it we will work on the comment, work on the maintenance agreement and this matter will be placed on hold until the court has decided for the decision is made, you don't want to see us back until the decision is taken care of.

Mr. Scheible: I don't see any reason to come back.

Mr. Van Leeuwen: We'd like to see the maintenance agreement. We will try again.

Mr. Jones: We'd like to see the decision by the Court and for what reasons.

Mr. Zimmerman: I have a copy of the court decision Joe does I am sure.

Jones: When they are all through playing with it and they think they want us to work on it.

Mr. Scheible: I will have our attorney look them over.

CATANZARO AMENDED SITE PLAN

Mr. Lou Grevas: The reason for this application is to amend site plan that was previously approved by the Planning Board back in 1971. For this property on the east side of 32 where Ernie's Taylor Shop used to be and where Stinson's Pet Shop and where there is proposed a karate school which is shown in the building area as use C.

Mr. Schiefer: Is that proposed or in existence?

Mr. Grevas: They have got a sign on the door which said they are open but yesterday when I went there the door was locked. The reason we are here since this was a change in use of the building, their office requested a site plan be prepared. The reason for the last revision was a comment by the building inspector's office was we should have the uses shown on the building which we did not have before so I put those on and the bulk tables you will note that this building was put up under the old zoning which was general business back in 1971 and there are quite a few of the bulk requirements that are non-conforming because of that. The zone now calls for some different requirements. Needless to say we do meet the parking requirements for the uses intended. I say needless to say because we have included some parking to the rear of the building. One point on that parking in the rear of the building we are proposing to leave unpaved because there is an existing drainage problem in the area. We'd like to leave that unpaved so it percolates into the soil. Just some of Mark's comments, there is a comment about curb bumpers on the parking lot. There are curbs shown two feet from the front edge of the proposed parking lot for that purpose.

Mr. Van Leeuwen: I think we should put this on our tour.

Mr. Grevas: Again I think storm drainage situation should be addressed here and I'd like to point out if you will note on the right hand side of the plan the way that the water comes from 32 across the adjoining piece of property and through this piece of property. There is a plan to excavate a little bit of dirt to try and get that into the storm drainage system but the drainage comes down 32 and doesn't get into the storm drainage system through no fault of the Catanzaro's.

Mr. Van Leeuwen: That is why I suggest we go take a look at it. He can show us where the problem is because there is a definite problem there.

Mr. Grevas: There has been action taken by the Town to cite Mr. Catanzaro for non-conformance to the 1971 site plan. There is also an action I believe that is going to be handled at the next Monday night Zoning Board meeting with reference to a sign on the building. I think an application has been made to revise and existing sign on the building for that new use.

Mr. Mc Carville: How about Ernie's sign?



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WILLIAM J. HAUSER, P.L.
MARK J. EDSALL, P.L.
Associate

Licensed in New York,
New Jersey and Pennsylvania

TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: Windsor Counseling Group
PROJECT LOCATION: Off Route 94 (Near Doral Drive)
NEW WINDSOR #: 87-53
18 November 1987

1. The Applicant has submitted a Site Plan for review for business and professional office use of an existing one-story building.
2. The Applicant should verify that legal access exists to Route 94 via the gravel road and right-of-way.
3. The Applicant should verify the floor area as indicated, with comparison given to the dimensions indicated on the Site Plan. A review indicates the possibility that the actual floor area is greater than that shown in the parking analysis.
4. With regard to the parking as shown, space 7 is unacceptable since its use is restricted by space 6. In addition, a handicapped space should be shown.
5. On the next Plan submitted, the Applicant may wish to furnish a sign detail and indicate any site lighting proposed.
6. Future plans should include both required and provided data for the Zoning Bulk Table. The Board may wish to note that the existing conditions are such that the minimum requirements for lot width and total side yard set back are not met.
7. The Board should note that a Proxy Statement has not been filed regarding this project.
8. The Applicant has submitted a completed Short Environmental Assessment Form. The Board may wish to take action to assume the position of Lead Agency under the SEQRA Review Process.

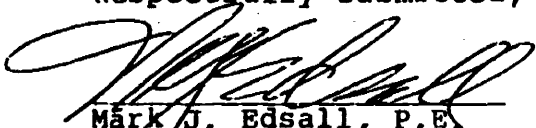
TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: Windsor Counseling Group
PROJECT LOCATION: Off Route 94 (Near Doral Drive)
NEW WINDSOR #: 87-53
11 November 1987

Page 2

9. The Planning Board should determine if a Public Hearing will be necessary for this Site Plan per its discretionary judgement under Paragraph 48-19.C of the Town Zoning Ordinance.

Respectfully submitted,



Mark J. Edsall, P.E.
Planning Board Engineer

MJEnjE

5/25/88

This is to certify that this document is a true copy of same, as filed in my office.

Mr. Kennedy: Okay.

Signed:

Ruthie H. Townsend
Town Clerk 7/6/89

WINDSOR COUNSELING GROUP SITE PLAN (87-53)

Mr. Jerry Zimmerman came before the Board representing this proposal.

Mr. Zimmerman: We appeared before your Board in November of '87 with the site plan for the Windsor Counseling Group. The property is located off of Route 94 adjacent to property owned by Dr. Benninger. It has frontage or has its access off of a private road. The property itself, or the building itself is an existing building which serves a private business called Windsor Counseling Group and the purpose of our presentation tonight is to obtain site plan approval from this Board. When we discussed the matter back in November of '87, I presented or had given the Board some background and history as to the circumstances leading us to this point. Basically, the Windsor Counseling Group has occupied this building for approximately two and a half to three years and the original problem that existed here was concern over the zoning line which we had worked through with the Zoning Board of Appeals. Then through the Court system had a decision that this property is in fact zoned commercial to continue the process and to obtain site plan approval and obtain a C.O. for a commercial use. We are at this point today seeking site plan approval. Basically, that is where we are today with this.

Mr. Pagano: I have a question. Isn't the Zoning Board appealing the decision.

Mr. Zimmerman: Well, when we were here in November of '87, approximately six months ago, Mr. Ronces had indicated that that was a possibility. However, we haven't heard anything since that time and if I am not mistaken, we have our attorney present who represented the Windsor Counseling Group through the Zoning Board and through his advice, he is recommending that we now come back before the Board.

Mr. Ronces: The appeal has not actually been dismissed. However, due to an administrative error, the briefs were not submitted to the printer for printing and filing with the Appellate Division. More than a year has gone by since the decision of the local Supreme Court against the Zoning Board and due to the passage of time, due to the one year time period going by it is not likely that the Appellate Division will enlarge the time to submit the appeal. However, the motion will be made and should probably be determined within the next six weeks as to whether the time perfect the appeal would be enlarged by the Appellate Division. But, at this point, due to the amount of time that has gone by and the pressure that they have had through the local justice court, it would be appropriate to get the site plan review process going.

Mr. Mc Carville: I notice on the plan that you have parking space number 8. First of all, you have 9 showing, 9 spaces provided. I see eight on here which includes the garage which I question whether someone is going to be able to park in the garage with someone parking in this handicap number 7. It doesn't look like it has adequate room to get into it.

Mr. Van Leeuwen: I don't see how you can use the garage for parking space. That is a first, that is the first I have seen that. That is a new one on me.

Mr. Mc Carville: Not for commercial.

Mr. Zimmerman: The zoning requires 8 spaces in total.

Mr. Van Leeuwen: What is the matter with going back here.

Mr. Zimmerman: We have further room to expand on the parking. There are two partners, that and a full time secretary that arrive prior to any clients or patients coming to the building. They can and do use the garage to park and they are there all day. The property is bordered by a residential use and a business use. If you saw the building, you would see it is trying to keep in character to some degree with what surrounds it, residential and commercial. We could expand the parking. The Windsor Counseling Group has agreed to do more blacktopping if required but right now, they have been operating for approximately 3 years and for the most part have been able to accomplish the parking that is necessary there.

Mr. Mc Carville: I notice it says shale parking area to be relocated.

Mr. Zimmerman: That has been done.

Mr. Mc Carville: That we assume that it is still shale.

Mr. Zimmerman: In the parking area.

Mr. Mc Carville: These 1,2,3,4,5, these spaces are shale or paved?

Mr. Zimmerman: No, they are not paved.

Mr. Mc Carville: They should be paved.

Mr. Schiefer: Is parking space 7 the same size as 6?

Mr. Zimmerman: It is probably a little larger.

Mr. Schiefer: And Mark's comments, judging by the map is it big enough for handicapped parking?

Mr. Zimmerman: Right now you can park three across in that driveway and that is what they do. That parking space is a line on the paper but anybody that parks there has all of this space available to them. Parking is really not an issue and can be expanded if required.

Mr. Van Leeuwen: I suggest we put this on one of our tours. I'd like to look at it.

Mr. Lander: You have the handicapped space. Do you have handicapped access into the building. Do we need a ramp there for that purpose?

Mr. Zimmerman: There is a probably a four inch step onto this concrete walkway before you enter into the building. The building is one level.

Mr. Lander: There is no stairs?

M. Zimmerman: No.

Mr. Van Leeuwen: Since this is so close to a single family residence area and we have had a lot of people comment on this, I think we ought to schedule a public hearing for this after we see it because I will tell you something, there's been too many complaints in the area. I am not talking about Mr. Nugent either. I am talking about other people on Doral Drive which is the next street over have complained so I think those people have a right to speak. We should find out what the problems are so we can address them.

Mr. Mc Carville: Do you have a maintenance agreement?

Mr. Zimmerman: There is no maintenance agreement. The history of this has been even when Dr. Benninger had come in for his site plan approval through Dr. Benninger and New Windsor Counseling Group, they have approached the other users of that road to try and get a maintenance agreement. We would be agreeable to participating in the maintenance agreement. However, Dr. Benninger could bear this out, that we were not or there hasn't been any success in maintaining an access agreement with anyone.

Mr. Schiefer: Doesn't Dr Benninger have access on 94?

Mr. Van Leeuwen: No, his parking lot comes off the private road.

Mr. Scheible: That is the same store we got when you were in here the last time. The driveway is getting worse over time and I think what is happening is everybody that lives on the road is saying well, why do I have to keep it up, let the other guy do it. Before you know it this road is going to be in shambles. We can't seem to get any agreement on the road. We are going to have another Schwartz Lane pretty soon. We will all go down and take a look at it. There is a bigger piece of property up above that that could be subdivided into a couple more lots.

Mr. Babcock: I have a building permit application for a house just beyond this right now. We are in discussion with him about the road also. Actually the guy behind him actually according the deed, he owns this road.

Mr. Zimmerman: I don't know.

Mr. Rones: It is possible it is a private road.

Mr. Babcock: No, there is a gentleman behind Windsor Counseling Group, he owns that piece of property plus the piece of property coming out to 94.

Mr. Mc Carville: Is your right to use this an easement or right of way?

Mr. Zimmerman: Both.

Mr. Rones: Language in the deed says together with an easement in use for egress and ingress over the roadway aforementioned.

Mr. Scheible: When is a convenient evening so we can get everybody to go out there. Wednesday evening at 6:30.

Mr. Edsall: Would you check to see if you have a proxy statement. If you do you should be asking Jerry to waive the deadline.

Mr. Scheible: I looked but I can't find one.

Mr. Edsall: Because we are well passed I believe the 90 days because they were in on the 8th of November and they haven't been back in since.

Mr. Van Leeuwen: Do yo have any problem with waiving the 90 days?

Mr. Zimmerman: No.

Mr. Edsall: We have to hve somebody that is authorized.

Mr. Scheible: Can you supply us with a proxy statement.

Mr. Zimmerman: Yes. Do you want someone or myself to be present at your inspection?

Mr. Scheible: It would be advisable, 6:30 on Wednesday.

MOORES HILL ESTATES SUBDIVISION (87-67)

Mr. Mike Sandor came before the Board representing this proposal.

Mr. Sandor: I'd like to discuss a few things of what transpired last month. He were asked at last month's meeting to pursue with the DPW to achieve the access out onto Moores Hill Road. And what we requested was permission to do any improvements that might be necessary in the future to that road and I was told by him that he would work with us with any bonding improvements, right of ways, etc. for that road. Number two, and most importantly I met with DEC last week, a week ago Friday the day the maps had to be in and the DEC has indicated to me that the stream is a Class A stream. They'd like to see a 50 foot buffer from the stream and they would like us not to relocate the stream. The maps that I hve before you were issued that day but I have revised some of those maps. I'd like to just show you those maps. It is the same amount of lots now. Bernie Davis, the attorney who is not here tonight has written to the Town Board because there is some--there might be a possibility that this property could become at some future date, within the water district. Now, I have indicated on this map 25 lots and that is the same amount of lots that was proposed initially. I added a short cul-de-sac but if you notice along the stream, I kept a buffer in addition, where it is steep in the back, we have kept the buffer from the existing houses along Weather Oak Hill Road. I have also spoke with the Town Board and they have indicated to me that there is a possibility of a water main extension servicing this immediate vicinity.

Mr. Van Leeuwen: It is not ready yet though.

Mr. Sandor: I realize that.

Mr. Van Leeuwen: Are you going to leave this piece completely along?

Mr. Sandor: Right.

Mr. Van Leeuwen: He is going to have to go to the Town Board for a zone change.



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TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: WINDSOR COUNSELLING GROUP
PROJECT LOCATION: OFF ROUTE 94 (NEAR DORAL DRIVE)
PROJECT NUMBER: 87-53
DATE: 25 MAY 1988

1. The Applicant has submitted a site plan for review for a business and professional office use of an existing one-story building. The plan was previously reviewed at the 18 November 1987 Planning Board Meeting.
2. The Board may wish to verify that the subject property is located within the NC Zone. If so, the site plan complies with all minimum requirements of the Bulk Table, with the exception of the provided lot width.
3. The issue of legal access by right-of-way to the subject property should be demonstrated to the satisfaction of the Planning Board Attorney.
4. The number of required parking spaces for the site is a total of eight (8) spaces. The plan indicates a total of nine (9) spaces are provided; however, I can only see seven (7) on the plan. Therefore, an additional space is required for compliance with the Town Code.
5. The handicapped space shown on the plan is not of sufficient size.
6. The sign detail does not indicate the manner in which the sign is mounted on the property.
7. The light detail does not give information with regard to the height of the unit and lighting area. It should be verified that the lighting curve of the unit does not result in a nuisance to adjoining residential lots.
8. The Planning Board Chairman should verify that a Proxy Statement has been filed regarding this project.
9. The Board may wish to take action to assume the position of Lead Agency under the SEQRA review process.


TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: WINDSOR COUNSELLING GROUP
PROJECT LOCATION: OFF ROUTE 94 (NEAR DORAL DRIVE)
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-2-

10. The Planning Board should determine if a Public Hearing will be necessary for this site plan per discretionary judgment under Paragraph 48-19.C of the Town Zoning Ordinance.

Respectfully submitted,


Mark J. Edsall, P.E.
Planning Board Engineer

MJE.emj

windsoremj

6/8/88

This is to certify that this document is a true copy
of same, as filed in my office.

Signed: Pauline H. Townsend

Town Clerk

7/6/89

Mr. Scheible: I haven't had a chance to review it because the plans which were previously submitted were not as a home occupation. So, that is the first time we have seen it this evening as a home occupation set of plans. So, personally, I haven't had time to review it.

Mr. Kartiganer: Thank you.

WINDSOR COUNSELING GROUP SITE PLAN (87-53)

Mr. Gerald Zimmerman and Alan Lipman came before the Board representing this proposal.

Mr. VanLeeuwen: Mr. Chairman, or maybe Joe Rones, can you bring us up to date as far as the lawsuit.

Mr. Rones: Well, as far as I know, unless there is some later news that Mr. Lipman has, the Appellate Division has not made a decision. There is an application pending by Mr. Lipman to dismiss the Appeal and there is a cross application by the Zoning Board to enlarge the time to appeal. The issue here being that in January, the briefs were sent out or thought to have been sent out for printing in accordance with the Court Rules. For some reason or another, the briefs never arrived at the printer. The time for filing the briefs expired in early February and that has given rise, I have just learned, of the nonfiling of the briefs a couple of weeks ago when I got a call from Mike Babcock with respect to the filing of the site plan application. I checked with the Court and found out that the briefs had not been filed or served so that gives rise to the current application and cross application. It was to be received by the Court on June 3rd, and, as I said, I don't have the decision on it yet. Based upon the Court Rules and precedence, I'd say that the likelihood of the Court dismissing the Appeal are very high.

Mr. McCarville: Was it not so, did the Court direct the applicant to come to the Planning Board and proceed?

Mr. Rones: He has another matter pending with the Town Court.

Mr. VanLeeuwen: The applicant does?

Mr. Rones: Yes, he has been sighted by the building inspector with respect to operating improperly, operating without a site plan and the Town Court has had, for some time pending, the direction that he proceed and get his paper work squared away.

Mr. VanLeeuwen: What Judge is handling it?

Mr. Roness: I believe it is Judge Krieger.

Mr. McCarville: Do we have any fire department comments?

Mr. Edsall: My records indicate on July 21, 1987, they approved it and memory from about a week ago is they did not change their position.

Mr. McCarville: So, they approved the plans?

Mr. Edsall: Yes.

Mr. VanLeeuwen: They did approve it?

Mr. Scheible: I can't find it.

Mr. McCarville: Did you look into it?

Mr. Edsall: I did speak with him at our latest coordination meeting and they did not change their position. So, it stands approved.

Mr. Jones: The fire department approved it?

Mr. Edsall: Yes.

Mr. Scheible: How wide is the road?

Mr. Zimmerman: The right of way is 40'.

Mr. McCarville: I was saying that if the ruling is dismissed, what I would like to see is that this road be brought up to specs at least 24' paved to the ends of the applicant's property. As far as what goes on up further, that is for somebody else to resolve at another point.

Mr. Jones: I say somebody else should share the cost of that road too.

Mr. McCarville: Quite possibly.

Mr. Lipman: May I speak?

Mr. Scheible: Yes, you may, sir.

Mr. Lipman: My name is Alan Lipman, I am an attorney in Goshen, New York. Back in December of 1985, it is a little more than

three years ago, you considered the application of Dr. Benninger site plan review and approval of a similar use. Although a larger use for a slightly larger piece of property. But, that use was office as this is and the access to that site was exhibited at that time as this same project drive. I am sure most of you are familiar with that plan. We are aware of that time of the condition of the road, you are aware that there was no maintenance agreement. But, in it's place, there were agreements allowing everybody whose properties were accessed by that road to use it for ingress and egress. The issue arose as to it's condition in your minutes which I have here and resolved by ignoring the conditions of the road, allowing it to be used by approving the site plan.

Mr. VanLeeuwen: That doesn't mean we have to continue.

Mr. Lipman: I am not trying to argue with you, I am bringing history to your attention and the fact that we would like to be treated no differently than others in similar circumstances. He is one of those others.

Mr. Scheible: We are not going to argue that point. But, in the same sense, if one person jumps off the Brooklyn Bridge, another one doesn't have to follow him off either.

Mr. Lipman: I wouldn't suggest that you guys jump off the bridge.

Mr. Scheible: You are asking us to do it twice. If what you are saying is true, you are saying to us to do the same thing twice.

Mr. Lipman: We don't have control over the cost of the improvements that others will benefit from.

Mr. Scheible: We don't know who is going to. But somewhere, somehow, this road would have to be improved. There is no way there is going to be any approvals given. We don't know if it is going to go past the Court yet. So, as far as I am concerned, I only speak for myself. As far as I am concerned, this road, whoever is going to pay for it, I don't know at this point myself. But, it will have to be approved before there will be any approval given so far as I am concerned. Now, I am sure the rest of the Board can speak for themselves.

Mr. McCarville: I concur, Mr. Chairman.

Mr. Lipman: You feel even if we have to pay for the entire job.

Mr. McCarville: I didn't say that.

Mr. Lipman: We don't have any control over anyone else.

Mr. McCarville: Somebody is going to have to lead the bandwagon and get a maintenance agreement.

Mr. VanLeeuwen: Something is going to have to be done.

Mr. Zimmerman: The Town can do something.

Mr. VanLeeuwen: You want the Town to come in here?

Mr. Zimmerman: If they are in such deplorable conditions, the Town can take it over.

Mr. VanLeeuwen: They can't, it is 40'.

Mr. Zimmerman: You can condemn the property.

Mr. Jones: The night the doctor was here, he stated that he was going to get a hold of the other property owners and fix it.

Mr. VanLeeuwen: We cannot continue to do it. First of all, the property is not in a proper place for a counsel group. It doesn't have enough parking because he is using the lot next door. We have been there several times. Gerry's own Mercedes was in the lot next door. I've been in there since then and cars were parked next door.

Mr. Lipman: Which lot?

Mr. VanLeeuwen: The bar's parking lot.

Mr. McCarville: They are using the property across the street.

Mr. Zimmerman: As far as the site plan requirement, the zoning requires a certain number of spaces. We are providing those number of spaces. If the big issue or the main issue with this whole project is the condition of this road, we have approached with Dr. Benninger the owners on the property. I have the names.

Mr. VanLeeuwen: Dr. Benninger helped you pay for the road.

Mr. Zimmerman: We had contributed toward the payment of this at one point in time there was some improvements made to the road to repair the potholes and New Windsor Counseling Group contributed with Dr. Benninger.

Mr. VanLeeuwen: Dr. Benninger is willing to contribute, otherwise we will bring him back.

Mr. Zimmerman: We do have somewhat of a commitment.

Mr. Scheible: We happen to have one of the neighbors and she is raising her hand. She is in for a previous item here, Mrs. Nugent. Do you have something to add?

Mrs. Nugent: They not only park on their property, they park on O'Mara's, on the road and my property and I have written notes to their customers asking them not to park on my property.

Mr. Scheible: Seems I have heard the same thing. I have heard the same thing from other people.

Mrs. Nugent: We have had to ask them to move in case we needed an ambulance or fire truck up the road.

Mr. Zimmerman: This has been going on since the public hearing in the Zoning Board where they park and they don't. I would like to know why, if we have an adjoining property owner here, why they don't want to contribute towards the maintenance agreement.

Mrs. Nugent: We have done the maintenance on this road for thirty years. We contributed with Dr. Benninger when he did the few improvements.

Mr. McCarville: They are not running a business, they are maintaining residential area there.

Mr. Zimmerman: Well, there is another issue there too. There are plumbing trucks that go back and forth on that road. That road takes a beating from those heavy trucks also. However, there are only two other property owners on the road, Nugent and Kiler (phonetic). There are only two homes.

Mr. Scheible: Residences, not places of business.

Mr. Zimmerman: Two residences and you have the bar that has access to it.

Mr. Scheible: As far as I'm concerned with the bar, I'd like to block that right off. If I have an easement, that is a different story.

Mr. McCarville: Who actually owns the road?

Mr. Zimmerman: The ownership is in various names. One is owned by George Afaro (phonetic) who owns 20' of the right of way past our property.

Mr. McCarville: What direction?

Mr. Zimmerman: He owns this lot and he owns this portion of the right of way.

Mr. McCarville: Is that shown here on the map?

Mr. Lipman: It makes very little difference who owns it. They have the right to use it.

Mr. Zimmerman: On the other side tax lot 60.2 is Congelari (phonetic). He is the owner.

Mr. VanLeeuwen: He was right here.

Mr. Zimmerman: That is correct, he owns up to the end of that property. Beyond that point, the direct ownership of the right of way is in the name in Nugent and Kiler and in this portion here Afaro. We do not own any portion of the right of way. Nor does Benninger. We have the right to use it. We are willing to contribute to the cost of the road. We are willing to contribute to the maintenance agreement.

Mr. VanLeeuwen: I don't want you guys to bear the whole cost. That is not what we are trying to do.

Mr. Lipman: I don't know if you have any greater control than we do over the other owners.

Mr. VanLeeuwen: Sit down with all of us and get it straightened out.

Mr. Zimmerman: If this Board could help, that would be fine.

Mr. Lipman: We are willing to contribute a fair share, a reasonable share of cost of improving it.

Mr. VanLeeuwen: If we can't get that, then what?

Mr. Lipman: You are going to have to tell me. You are telling me you don't want to stick me out on a limb alone.

Mr. Jones: He ignored it.

Mr. Zimmerman: We are not going to ignore it. If there is a possibility of an agreement and an expense, we are willing to be part of it. If the Planning Board, through a public hearing, would have these owners and they are willing to contribute towards this, then you can.

Mr. Scheible: Joe, do you want to explain to the Board what we discussed?

Mr. Rones: As far as having a public hearing is concerned?

Mr. Scheible: And also taking lead agency.

Mr. Rones: Well, due to the fact that, first of all, as I understand, Mark Edsall has just gotten this revised plan tonight and he has not had an opportunity to review it. There is a question that has been raised tonight, several questions with respect to the road and the parking situation at the site. Additionally, we haven't declared ourselves lead agency as yet and finished the SEQR process. We don't have the Court decision so if in view of those several points, I think we'd have a couple of choices and the applicant does too. One would be to have --- this application has been pending for some time also. That would be one. Two, the engineer has a note that the time periods were waived at the May 25th meeting and so I think we just want to confirm that or if the applicant wants to proceed with a vote on the current plan. Then, perhaps we should proceed with a vote on the plan.

Mr. Lipman: What time?

Mr. Rones: The ninety day review site plan review.

Mr. Lipman: What happens if those ninety days goes by and you don't decide the issue?

Mr. Rones: Then, you get an approval.

Mr. Lipman: Where do you find that?

Mr. Rones: In the Town Law.

Mr. Edsall: On the 25th of May, I had recorded here that it

was waived. I think Joe is leaning towards the confirmation of that. So that the process could continue.

Mr. Lipman: It is confirmed, it is waived.

Mr. Edsall: Do you care to get SEQR process started as Joe recommended?

Mr. Ronces: Entertain a motion to declare the Planning Board as lead agency.

Mr. McCarville: I will so move.

Mr. Jones: I will second that motion.

ROLL CALL:

MR. JONES	AYE
MR. PAGANO	AYE
MR. MC CARVILLE	AYE
MR. VAN LEEUWEN	AYE
MR. SCHEIBLE	AYE

Mr. Ronces: At this point, is there any further information on the environmental issues that the Planning Board would want the applicant to submit so that it could determine the significance or lack or significance of impact of the site plan on the environment.

Mr. Zimmerman: I submitted an E.A.F.

Mr. Lipman: Has the Planning Board reviewed the E.A.F.?

Mr. Scheible: Our engineer has, yes.

Mr. Edsall: For the record, it is a short form E.A.F. Obviously, minimal requirements for review. I see no problems with short form being used. But, I would ask again as Joe did if the Board is looking for any additional information so that we will know exactly what we should take into consideration when it becomes time to make a determination of significance.

Mr. Ronces: If, in other words, on this parking issue for example, if there is some data based on diaries or other documentation that the applicant might have as to how many employees or principals are at the site at a particular time. How many business guests or whatever are at the site at a particular time, what the use of the property is. So, that it would be helpful to gage the parking requirements.

Mr. Lipman: Aren't the parking requirements clearly set forth in the zoning ordinance?

Mr. Rones: Those are the minimum requirements that are set forth. If the Planning Board determines that there are problems or circumstances that warrant additional parking, it has been their prerogative to do so.

Mr. McCarville: Did you look into the number of visitors per day?

Mr. Zimmerman: There are three offices in the building. So, you'd have at any one time, three counselors and three patients or clients and there is one secretary.

Mr. VanLeeuwen: Is there three waiting?

Mr. Zimmerman: Everything is by appointment. So, you may have, when people are leaving and coming in, you may have some overlap. But, that is the business.

Mr. Scheible: There isn't any room for an overlap as far as parking is concerned.

Mr. Zimmerman: What they do is we show legitimate parking spaces on the plan. But, they park on the driveway. There is a lot more room for other cars. The people that are there all do park up in front, they do use the garage and there are other spaces available. However, like anything else, there are times when there is an overflow, like any business. You have a house, you have party, there is an overflow.

Mr. Scheible: Since parking is critical here, I would like to bring up and let me talk please, that while we were down there just for future sake, there is a problem here with parking and it is only gravel. So, like we are saying people are overlapping, people don't know where to park. You might get three people who would be able to park here and all the rest of the space is wasted. So, it's not organized. So, you'd have to put stripes.

Mr. Zimmerman: Pave and stripe.

Mr. Scheible: That is after you pave out to the highway.

Mr. Jones: There is three parking spaces in the front where the parking spaces are marked out and the people still park in the back of the beer joint. They don't care about parking.

spaces.

Mr. VanLeeuwen: That is not the biggest problem. The biggest problem is the stinking road.

Mr. Scheible: That is the biggest problem.

Mr. Jones: We shouldn't have let Dr. Benninger go.

Mr. VanLeeuwen: I remember it quite well. Dr. Benninger gave us verbal that he would do his best to get it straightened out, to fix the front a little bit. I go right back to my motion I made twenty minutes ago to have a public hearing. Maybe some of these people that live in the area that own these properties will come to the public hearing. Maybe we can have a meeting of the minds. I'd like to see somebody second the motion.

Mr. Lipman: In the course of a public hearing, there is no real opportunity to reach the meeting of the minds. That is not the place to try and arrive at an agreement.

Mr. McCarville: Maybe the applicant should try and create that environment.

Mr. Lipman: I think he has. Would you like to be part of it?

Mrs. Nugent: I own part of it. There are seven people that own a part of it, not just one or two.

Mr. Lipman: We can't force anybody else.

Mrs. Nugent: Fine.

Mr. Lipman: Would you like to be part of it?

Mrs. Nugent: Certainly, I travel the road.

Mr. Scheible: That is another matter you two can discuss at another time. At this point, there was a permit to give, a foundation permit. And at that time, there was quite a discussion. It's not according to these, but I remember the discussions, the minutes don't go into too much depth here. But, there was quite a discussion at that time as to who was to maintain the road. It doesn't say so here.

Mr. VanLeeuwen: Dr. Benninger said he couldn't get the people together and he would fix up the front part of the road.

He never told us ---

Mr. Zimmerman: Was part of it at that point, we were satisfied and we gave him approval.

Mr. Lipman: Look at the date of those minutes. Although those minutes refer only to a foundation plan, you will see that twelve or thirteen days later, the site plan was signed by you, sir.

Mr. McCarville: There is a lot more discussion than what is indicated in the minutes.

Mr. VanLeeuwen: I remember the discussion. If you bring George Benninger in here, he will tell you.

Mr. Lipman: There is no indication in the minutes that you were going to approve the site plan.

Mr. Scheible: That is in the past. What is going to happen right now.

Mr. Zimmerman: We will repair the potholes. We are willing to contribute.

Mr. Scheible: Do you want to go to a vote tonight? You keep on pushing us that you are not going to do anything with that road.

Mr. Zimmerman: I didn't say we are not. What we said we'd do is the best we can do. It's contributed with the other property owners. I don't think it is reasonable or fair to have us blacktop or repair the entire road.

Mr. McCarville: I don't think it is fair to expect all seven. If you can't get it, maybe the other five are going to pick it up.

Mr. Lipman: We are not saying that we won't. We don't want to do it alone.

Mr. Roness: If I can make a suggestion and I think this would help on the parking and the road. These environmental issues, if the parking is going to be expanded, there may have to be some screening. It seems that the parking is pretty much used up except for one space by the people who just work at the premises. Perhaps the applicant could develop some more information for the purpose of the environmental review. Not necessarily, I don't think for a matter of this size requires

a draft environmental impact statement. But, certainly some further information for the Board to make some findings with respect to the impact of the parking problems, the road usage problem and the screening problem of the site. And also additional parking from the surrounding residential uses along with some proposals for some mitigation and then just focusing on those areas which seem to be the main areas of concern. Then, maybe we can arrive at some consensus as to what a solution to the site development would be.

Mr. Lipman: I think we are prepared to show three or four more parking spaces and to provide those additional facilities and avoid the problem all together. We have the room. Maybe substantially more than your ordinance requires. We will provide it in any case.

Mrs. Nugent: Three or four parking spaces will not take care of the fifteen or sixteen cars that they have at times.

Mr. Scheible: Thank you.

Mr. McCarville: I also would like to comment that would entail developing the back yard, I would assume.

Mr. Zimmerman: If we have to, yes.

Mr. McCarville: And to the extent that if that changes how I feel about the public hearing because that goes right up against the residences. You have headlights coming in in the evening, during the winter months. The people in the back yard normally would be there and at that point, I think a public hearing would be necessary because it changes the character of what has existed there whether it was approved or not.

Mr. Lipman: The piece behind us is commercial.

Mr. Babcock: Alongside is residential.

Mr. Zimmerman: It is also very well screened. There is a stone wall and there is trees. You're not going to see anything.

Mr. McCarville: Except when the leaves fall off in the wintertime.

Mr. VanLeeuwen: It changes the character of the neighborhood. We'd get a lot of criticism if we didn't as a Board, did not have a public hearing.

Mr. Lipman: We are not faulting you.

Mr. McCarville: I will second the motion.

ROLL CALL:

MR. JONES	AYE
MR. PAGANO	AYE
MR. MC CARVILLE	AYE
MR. VAN LEEUWEN	AYE
MR. SCHEIBLE	AYE

Mr. Roncs: Can I make a suggestion which would be to receive the additional information if any at a meeting after tonight at a next meeting or two from the applicant as to what his proposals are with respect to parking and the road situation and whatnot. So that when we do have a public hearing, the plan is a little more finalized and these environmental questions have been dealt with.

Mr. Scheible: We will put him on the next agenda. Can you have a new map ready?

Mr. Edsall: What you are meaning is once the information is received, they will be put on the next available agenda.

Mr. Scheible: Yes.

Mr. Edsall: The following one as to when you receive the information.

Mr. Zimmerman: To move this along, the next agenda is June 22nd.

Mr. Scheible: That is booked up. We have a public hearing.

Mr. Zimmerman: On the following agenda.

Mr. Scheible: The next available agenda. You will have to submit a new set of plans. Also, not the same evening, all right?

Mr. Zimmerman: I understand that. The only reason why you got these tonight is because of the meeting we had on Thursday.

Mr. Scheible: I can understand that. But, a new set of plans have to be in the engineer's hands ten days prior to.

Mr. Zimmerman: If I can assure you that, they will be, will

you reserve some time on the agenda in the 'first meeting in July?

Mr. Scheible: I will study it, if there is anything else that has to be dealt with that evening, that should take priority or this, I will examine that first.

Mr. Ronces: Do you have the situation at the site, group meetings or something where you do generate fifteen cars at a time? If you have that information now, if you could tell the Board what the hours of those meetings are. How many people are there, typically, so that rather than have that issue addressed in a public hearing when the neighbors bring it up, if that could be dealt with before. I think it would be better to deal with that up front.

Mr. Jones: There is one thing I'd like to ask that a copy of them minutes be taken off the tape and given to us verbatim. Those minutes only have part of the meeting on it. The ones that he brought in, the old one there.

Mr. Zimmerman: Tape number 352 and 353 and I'd like to submit a proxy statement also.

HALMAR CONTRACTING SITE PLAN (88-13)

Mr. Paul Cuomo and Charles E. Frankel, Esq. came before the Board representing this proposal.

Mr. Cuomo: We went out there and we tried to be responsive to the comments.

Mr. VanLeeuwen: I'd like to make a motion we waive the public hearing on the matter of Halmar Contracting Site Plan.

Mr. McCarville: I will second that.

ROLL CALL:

MR. JONES	AYE
MR. PAGANO	AYE
MR. MC CARVILLE	AYE
MR. VAN LEEUWEN	AYE
MR. SCHEIBLE	AYE

Mr. Cuomo: We widened the driveway to 30' at the suggestion of the fire board.



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WILLIAM J. HAUSER, P.E.
MARK J. EDSALL, P.E.
Associate

Licensed in New York,
New Jersey and Pennsylvania

TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: WINDSOR COUNSELLING GROUP
PROJECT LOCATION: OFF ROUTE 94 (NEAR DORAL DRIVE)
PROJECT NUMBER: 87-53
DATE: 8 JUNE 1988

1. The Applicant has submitted a Site Plan for review for a Business and Professional Office use of an existing one-story building. The Plan was previously reviewed at the 18 November 1987 and 25 May 1988 Planning Board Meetings.

2. As of the time reviews were made for this meeting, no updated or revised Plan have been received. In general, my concerns remain as follows:

- a. Number of parking spaces provided.
- b. Size of handicapped parking space.
- c. Detail of sign mounting.
- d. Site lighting.

3. The Planning Board should verify that a Proxy Statement has been filed regarding this project.

4. The Board may wish to take action to assume the position of Lead Agency under the SEQRA review process.

5. The Planning Board should determine if a Public Hearing will be necessary for this Site Plan per it's discretionary judgement under Paragraph 48-19.C of the Town Zoning Ordinance.

Respectfully submitted,

Mark J. Edsall, P.E.
Planning Board Engineer

4JEmj

This is to certify that this document is a true copy
of same, as filed in my office.

Signed: Pauline H. [Signature] 4-26-89
Town Clerk 7/6/89

WINDSOR COUNSELING

Mr. Rones: Regarding New Windsor Counseling Group, somehow the resolution or the motion didn't quite get it all as far as the minutes were concerned or maybe it did, I don't mean to put it quite that way but maybe it just came across wrong, contrary to the way we always do things as far as making a motion to deny a site plan because it needs referral to the Zoning Board of Appeals and then voting no, this application came across an affirmative motion in the minutes of March 8th. Mr. VanLeeuwen, according to the minutes, made it.

Mr. VanLeeuwen: That motion was really made so that the Planning Board could ask Mike or direct Mike to cite them. That is what that motion was all about because I remember making it. It was only made about a month ago.

Mr. Rones: The motion says what is reflected in the minutes here is Mr. VanLeeuwen, I make a motion to refer the Windsor Counseling Group site plan back to the Zoning Board of Appeals because there is not enough lot width. This is following the review of the memo from the Zoning Board of Appeals Attorney to the Planning Board Attorney dated 3 March, 1989. Mr. McCarville seconded and there was a unanimous vote of ayes.

Mr. VanLeeuwen: I will withdraw that motion.

Mr. Rones: It is just that there was more to it and the record isn't--I don't think reflects everything that went into the decision, as I recall.

Mr. VanLeeuwen: Are you objecting to us throwing them out.

Mr. Rones: No. The reason for my bringing this up, I wrote a letter the next day or so to the Windsor Counseling Group's attorney explaining to them that the night before the Planning Board voted to deny their site plan without prejudice to reviewing, after they obtain or if they obtain the variance from the Zoning Board of Appeals for lot width. I forwarded him a copy of the letter over.

Mr. VanLeeuwen: What that motion was all about is to direct Mike and have the Planning Board back him to cite them that they are illegal and they are there illegally.

Mr. Rones: I understand he has done that but out usual format aside from what you wanted Mike to do is that we would deny the site plan.

Mr. VanLeeuwen: I make a motion that we deny the site plan.

Mr. Rones: And then after you have denied the site plan, refer them to the Zoning Board of Appeals.

Mr. VanLeeuwen: Due to inadequate lot width and he made--

Mr. Rones: I believe it is just due to inadequate lot width.

Mr. VanLeeuwen: He already made parking in there which he did not get Planning Board approval. He altered the site plan without getting Planning Board approval.

Mr. Soukup: There seems to be a full-time resident there which was not mentioned in the presentation and which does not have enough building area for both the office and the residence.

Mr. VanLeeuwen: The reason for turning him down is he has residents living in there. I made a motion to approve the Windsor Counseling site plan.

Mr. McCarville: I will second that motion.

ROLL CALL:

Mr. McCarville	No
Mr. VanLeeuwen	No
Mr. Soukup	No
Mr. Jones	No
Mr. Lander	No
Mr. Schiefer	No

Mr. VanLeeuwen: Reasons for turning him down, there is, there seems to be inadequate lot width. There is improvements made to the site without site plan approval and there is somebody living on the premises, appears to be somebody living on the premises which was never disclosed to the Planning Board.

Mr. Soukup: I believe that the ordinance requires square footage for living and square footage for office and the building doesn't meet those requirements,

Mr. McCarville: The fact that they never really upgraded that driveway coming in there.

Mr. VanLeeuwen: It is not clear whether the current private road law allows for commercial uses off of them.

Mr. McCarville: We question the safety of utilizing the private road for the purpose intended.

Mr. Rones: For the intensity of the use and does the Planning Board also refer this matter to the Zoning Board of Appeals.

Mr. VanLeeuwen: Yes, with a negative outcome.

1-25-89

Signed:

Pauline H. Townsend
Town Clerk 7/6/89

WINDSOR COUNCELING GROUP - SITE PLAN - ROUTE 94 (87-53)

Mr. Gerald Zimmerman and Alan Lipman, Esq. came before the Board representing this proposal.

Mr. Zimmerman: This site plan had been presented to the Board, I guess, it was about May or June of last year, '88, at which time there was some discussion regarding the site plan and in particular, item that were addressed in Mr. Edsall's letter or review letter dated May 25th, 1988. We made the required changes to the site plan and have resubmitted the plan, I guess, in about August and basically, the changes that we indicated on the plan that we will make the property is served by a private road and that has been one of the concerns before the Board as to the condition of the road. We did what we were proposing to do is to pave the road in its existing form for approximately 300 feet from Route 94 to the end of our property. We also indicated that we will improve the parking that is on our site. What is required is 8 parking spaces and we are providing, showing to provide 12 spaces. Eight in the front and 4 employees parking in the rear. Basically, the private road improvements, we had solicited prices from various contractors and in doing this work and we got a cost of about \$7,000 to make this repair and--

Mr. VanLeeuwen: What are you going to put on.

Mr. Zimmerman: Two inches of blacktop. Now, the Board had asked us to talk to the adjoining owners to see if they would be interested and willing to improve the road. Mr. Lipman will bear this out that we sent letters to the adjoining people. We had one meeting in July which 3 of the adjoining owners attended and then at a second meeting, we had no attendance. Our only, the only commitment that we have for any contribution on this road is from Doctor Benninger and his contribution is minimal at best. However, he indicated that he would contribute something toward this improvement. So, at this point today, this is our plan. We'd like to get a site plan approved and, you know, this is the improvements that we can afford to make and intend to make.

Mr. VanLeeuwen: I went in there the other day, sometime in the afternoon, there was cars parked all up in here and all up in here and all over this here and I sat there for about a half hour. As the people walked out, they got in the car here or here and they are parking all over the place here.

Mr. Zimmerman: I don't know. I can't answer.

Mr. VanLeeuwen: These are private homeowners. It isn't fair to those people.

Mr. Zimmerman: I can't answer those questions. I don't know whose car they were, whether they were for Windsor Counseling. From what I understand, to be the case now that the people that live up in behind this property for the most part go through what used to be O'Mara's Bar and cut through in that direction. The parking situation

we are showing what we can do to improve the parking on our site. As you know right now, there is a driveway where the people park and then there is this area out in front. We intend to improve that condition to provide 8 spaces in the front and 4 spaces in the rear.

Mr. Lipman: How many do we have now.

Mr. Zimmerman: There is five right up in front.

Mr. VanLeeuwen: Four here and five here counting the driveway is five.

Mr. Lipman: We are going to increase that by seven.

Mr. McCarville: The width, what is the width of this, 300 foot by what, 12 foot.

Mr. Lipman: Fifteen (15).

Mr. Zimmerman: Approximately 15 foot wide.

Mr. VanLeeuwen: And, the right-of-way is 40 foot.

Mr. Zimmerman: Forty (40) foot wide.

Mr. VanLeeuwen: When I was in there, there were nine cars there and they were parked up in here and I don't know whether they were yours or not, only one person walked out and got in the car here but two got in the car up further above your place.

Mr. Zimmerman: They were parked on the road.

Mr. VanLeeuwen: Yes, right off the side of the road. It was very difficult to get through here because I pulled in and I backed out and I sat here and I waited in O'Mara's parking lot for about a half hour or an hour. I think it is not fair to these people. I have said that before and I will say it again.

Mr. Lipman: Wouldn't this plan relieve that problem.

Mr. VanLeeuwen: Part of it but I think there is more people going in and out than what we realized even for this amount of parking.

Mr. Lipman: You saw nine and we are providing for 12.

Mr. VanLeeuwen: I saw nine here and here. I didn't count here.

Mr. Zimmerman: Was the driveway filled also.

Mr. VanLeeuwen: Yes. I don't know how many were inside.

Mr. Zimmerman: I mean here.

Mr. VanLeeuwen: Yes, they were parked up here and a bunch of cars in here and this little spot was full.

Mr. Zimmerman: Then, I don't know who was parked in O'Mara's, whether they were from Windsor Counseling or other people. What we can do and what we are attempting to do is provide 12 spaces on the property to improve the condition of that existing road which apparently is a problem to the people in the area. If stricter enforcement through the Windsor Counseling Group is required to keep them parked on that, this is what will have to be done.

Mr. VanLeeuwen: What if these people put a fence up here and here. Where are you going to go. They block their driveway on this end and this parking lot. Where are you going to go. I don't think you have enough parking. We were here with you too and there were a bunch of cars parked in O'Mara's.

Mr. Lipman: How many does the ordinance require.

Mr. Zimmerman: Eight (8) spaces.

Mr. Rones: Have you gotten Mark's comments.

Mr. Schiefer: I have another comment here. The width of the driveway going to the rear is still 12 feet. The fire department disapproved it based on that and on the 24th of August and their recommendation of 12 foot drive to be increased to the maximum width possible. Since that time, they have not approved the site plan.

Mr. Zimmerman: We will make it 15 foot wide. It is a driveway that is going to provide access for employees parking to the rear.

Mr. Schiefer: Until the fire department approves it, we can't and they have asked for wider driveway.

Mr. McCarville: We could and we have in the past.

Mr. Zimmerman: Well, we will make it 15 foot wide. What we did, the Board had indicated that the parking that was shown before was inadequate. At the Board's request, we went through and we are going to show additional parking. If the Board feels necessary, I can put more spaces back there. This is a residential neighborhood that surrounds the area. It is commercial in front and residential to the rear. If the Board feels necessary, I will put four more spaces back there.

Mr. Schiefer: You made the comment on the parked cars. Do you think twelve will be adequate.

Mr. VanLeeuwen: I'd like to know how many people are coming in and out of there. There is 15 minute sessions.

Mr. Zimmerman: No, they are hour sessions.

Nel Balinski (phonetic): My wife is one of the principals of the property and I do work there part time, okay. There are 4 offices on the inside of the building. Not all are, all 4 offices are used. Usually, there is approximately 4 employees there and usually there are 4 people with 4 offices is eight. On occasion, some people are

waiting and some leaving so we decided to make a few more spots than eight. My own opinion, it would be very rare indeed for us to need more than twelve spots. Usually, that driveway, we really don't always and often is it a lot of cars in the driveway, because of the people parked it is usually for the staff and nobody can get out unless somebody else gets out. The parking needs improvement. There are only 4 offices inside and usually one secretary. And, most of the time, not all 4 offices are being used at the same time.

Mr. McCarville: Do you ever have group sessions.

Mr. Balinski: I am aware of two groups that run. I forgot about that. Thank you. One group, I think, has five people in it. It is run in the evening when the other offices are not in use.

Mr. McCarville: Thank you.

Mr. Schiefer: Another one of the engineer's comments, no pedestrian and walkway exists from the rear parking space to the building entrance. Is this dangerous.

Mr. Zimmerman: This is not really, I mean, mostly that parking in the rear would be there for the employees. The in and out would be in the front. We will put a little walkway to go in towards the back but you are not going to have high traffic that you are going to need a walkway. I'd like to let the Board know if you don't know, this site, we have been working the Windsor Counseling Group has been working at this location for three and a half years now, serving this community. If you see a lot of people there, it is because they are in the Town of New Windsor, they are providing a community service. Too, they are in business, they charge for it but it is a community service. They have been there for three and a half years. They pay a rate of tax based on a commercial property. If you look at the tax roll, they are taxed on a commercial basis. It is a clean business. It is a professional business. It is not one where you have junked cars or other kinds of situations or problems. It is a needed business and you know, they are looking to do everything that this town and the Board feels necessary.

Mr. Lipman: More importantly, it is a permitted use.

Mr. VanLeeuwen: That is what they are in for, for a use permit.

Mr. Roness: No, for site plan approval.

Mr. VanLeeuwen: All these cars parked back here, if there was a fire, how could a fire truck get back. I couldn't get my car back there.

Mr. Lipman: That is why we are providing the twelve spaces.

Mr. Zimmerman: We are going to provide additional spaces. We are looking to do everything that is possible to make this a good and better situation than it is. We want to work with the neighborhood.

We want to do--

Mr. VanLeeuwen: It's been a bad situation for three years. Now, all of a sudden, we want to make it a good situation.

Mr. Ronen: The difficulty with the site, amongst other things, is that you have got a certain intensity of use there. Apparently, with the four professionals and their staff and all of the traffic that they and the employees and the patients or clients generate, and the situation, while it has been found to be in a commercial zone, doesn't conform as far as some of the area requirements that the zone has in mind for that kind of use and particularly, when you try to put a lot of traffic in there, it strains the situation as far as circulation around it. Parking, you mentioned that it is a residential area on one side of it. There is some screening that may be desired by the Board and to try and fit this all into the area is difficult. You have got a minimum lot width in this zone of a 100 feet and you don't appear to have a lot width of 100 feet so that is one of the things that is causing some difficulty as far as getting the proper circulation around the building and to the rear as far as parking is concerned. And, there are some other areas, I believe, that don't conform to the area requirements.

Mr. Zimmerman: That is the only thing, the lot width is required a 100 feet. This lot is 85. However, it is a pre-existing lot. It should, the Board should know that the only people that use this road beyond the Windsor Counseling Group are two families that live in the back. Now, unless they have 100 cars or they have visitors every day for 20 hours, those people can use their property. I mean, we have been there for three and a half years. Those people have not come to the building inspector complaining that they can't get in or out of their property. They use this road. There is plenty of access in and out for two houses. This is basically a dead-end street and you have two houses that are beyond this property that are using.

Mr. McCarville: There could be three or four more though.

Mr. Zimmerman: Well, you will deal with that when those things come in. I think there is maybe one lot.

Mr. VanLeeuwen: I suggest we schedule this for a public hearing and we will get some public comments. This way, we can get the public's feelings so there is no more arguments and I make a motion to that affect.

Mr. Lipman: I don't think we are saying that there are no objections from the public. What we are saying is there haven't been any objections from the two families that live beyond this property. We hear a number of objections to using this--

Mr. Schiefer: But, if it is a permitted use.

Mr. Lipman: The bottom line is we are not going away. This is a review administratively to determine what may best be done to satisfy

your requirements for site plan. We can't do anything about moving the house. We can't do anything about making the lot wider. But, we are going to apply it for a permitted use. You have got to tell us what reasonable requirements you have to allow us to get a site plan approved.

Mr. Edsall: One note which may be before and I agree with Henry, that it would be beneficial in hearing what the public has to say but before you go that step, we should not that the plan is very accurate in its note that a lot width variance would be required for this use in this zone.

Mr. Zimmerman: We didn't say it was required, it is a pre-existing residential use but the bulk requirements are related to the use which you are now proposing and for that use, you require a lot width variance, Mr. Rones, is that correct.

Mr. Rones: I really couldn't tell you off the top of my head. I appreciate your argument that just hasn't been considered before.

Mr. Edsall: If you change the use on a lot from residential to commercial and the width requirements for that commercial use is such that you don't have enough width with the lot you are proposing to do it on, do you require a variance.

Mr. Rones: What you are saying may or may not be true. Whether that is relevant to exactly what is happening here, I just can't answer.

Mr. Edsall: Based on the scenario I presented, is that an accurate statement.

Mr. Rones: I am not prepared to say.

Mr. Edsall: I think that should be looked into.

Mr. VanLeeuwen: I think our attorney should research that.

Mr. Rones: If I could say on that, whether or not it needs a variance with respect to area or not is something that we could think about but that is really up to the Zoning Board of Appeals and not up to us to interpret the ordinance as, you know, this is kind of a situation as to whether it requires an area variance or not.

Mr. McCarville: I second that. Two weeks ago or three weeks ago, we had a public hearing about lights shining into properties behind a business in a commercial area into a residential. This is a perfect example of laying out a piece of property with no screening in this.

Mr. Zimmerman: That is all screened, all trees.

Mr. McCarville: Between the existing house, Bryant and Morris.

Mr. Zimmerman: Absolutely. There are trees as thick as you can see back there.

Mr. VanLeeuwen: We will go back and take a look.

Mr. McCarville: I second the motion to set it up for a public hearing.

Mr. Schiefer: You seem to be opposed. You said you already had a public hearing with the Zoning Board of Appeals.

Mr. Lipman: I have no reason to be opposed.

Mr. VanLeeuwen: I want to get the people's feelings on this.

ROLL CALL:

Mr. McCarville	Aye
Mr. VanLeeuwen	Aye
Mr. Pagano	Aye
Mr. Schiefer	Aye
Mr. Soukup	Aye

Mr. Schiefer: We will schedule a public hearing as soon as possible. In the meantime, Mr. Rones, could you look into the legal aspect or you work with the Zoning Board of Appeals.

Mr. Rones: I will refer the question to the Zoning Board of Appeals' attorney and see if we do need a variance for the 85. I don't know either.

Mr. Zimmerman: Can we ask you to schedule a meeting at tonight's meetings. I hope you can appreciate the situation. You want to resolve this and we want to also. We gave you plans in August, it is six months to wait, you know, and I don't think it is really fair to us and to everybody even the adjoining property owners.

Mr. Schiefer: I'd like to resolve it as soon as possible but it is pretty hard to make it an emergency situation when you tell me you have been doing business for three and a half years and you are going to keep on doing business no matter what we said. I just heard that.

Mr. Zimmerman: We are naturally going to keep doing business but not in defiance of this Board.

Mr. Schiefer: I will schedule it as soon as possible. I am going to have to get together. I can't make any promises. I promise we will do it as soon as possible but setting up tonight, we already have a couple more next month. We will try to get it into March. I can't guarantee it until we see the agenda. In the meantime, business goes on.

Mr. Rones: In the meantime, do you have Mark Edsall's comments. There are two pages of them.

Mr. McCarville: I'd like to make a motion that the New Windsor Planning Board take lead agency position with regard to the Windsor Counseling Group Site Plan Route 94 - 87-53.

Mr. VanLeeuwen: I'll second that motion.

ROLL CALL:

Mr. McCarville	Aye
Mr. VanLeeuwen	Aye
Mr. Pagano	Aye
Mr. Soukup	Aye
Mr. Schiefer	Aye

Mr. Babcock: Just up the street from that project, there is a proposal to build another single-family house right next door to this one. One thing, if you do go there, there should be some consideration of screening on that side, not only on the back side so if you happen to visit the site.

Mr. VanLeeuwen: As far as I'm concerned, it don't have to be screened because I am not going to vote for it.

This is to certify that this document is a true copy
of same, as filed in my office.

Signed:

Pauline Stoumen
Town Clerk 7/6/89

3-8-89

WINDSOR COUNSELING GROUP

Mr. VanLeeuwen: I make a motion to refer the Windsor Counseling Group Site Plan back to the Zoning Board of Appeals because there is not enough lot width. This is following a review of a memorandum from the Zoning Board of Appeals Attorney to the Planning Board Attorney dated 3 March, 1989.

Mr. McCarville: I will second that motion.

ROLL CALL:

Mr. McCarville	Aye
Mr. VanLeeuwen	Aye
Mr. Pagano	Aye
Mr. Soukup	Aye
Mr. Jones	Aye
Mr. Lander	Aye
Mr. Schiefer	Aye

10/25/89 PB suggested compromise
for site plan approval.
11/8/89 PB revised proposal.

In re Windsor Counseling Group v. The Planning Board of the Town of New Windsor, New York
Supreme Court, Orange County
Article 78 Proceeding

Settlement proposal, without prejudice, presented to Alan S. Lipman, Esq. on October 17, 1989 by Daniel S. Lucia, Esq., following consultation among Planning Board members Henry VanLeeuwen, Ronald Lander and John Pagnano, Supervisor George A. Green, Attorney for the Town, J. Tad Seaman, Esq. and Planning Board Attorney, Joseph P. Rones, Esq.

Response and counterproposal made by Alan S. Lipman, Esq. on October 19, 1989

The Planning Board will grant site plan approval to the applicant upon the following terms and conditions:

1. Applicant to install a ^{18'}~~28'~~ wide paved road from N.Y.S. Route 94 to the "limits of road improvement" as shown on 2/10/89 site plan, using ~~two courses of blacktop of 3" and 1 1/2", respectively~~, with a sound base of shale ~~and one 3" layer of dense binder~~
Type 3

2. Applicant to provide no less than 15 exterior parking spaces (not including the garage). All parking spaces and drives to be blacktopped; and parking spaces and handicapped space to be paint striped. Applicant ~~to limit the number of patients and group sizes to the number of available parking spaces and to prohibit parking in driveway and on entrance road.~~

3. Applicant to install and maintain buffer screening along the full northeast and northwest sides of the property (both adjacent to residences) with a double staggered row of 4' high hemlocks.

4. Applicant to install "No Parking" signs on the private entrance road and request that patients observe the same.

5. Applicant to change exterior lighting to fixtures which direct light downward; no glare therefrom to be directed beyond property boundaries; ~~and all exterior lights to be turned off at 10:00 P.M.~~

6. Applicant to provide a General Release in favor of everyone connected with the Town of New Windsor who had any connection with this proposal, individually and as members of any Board of the Town; or as office holders of the Town, or as Town employees.

7. No residents are to be permitted on the property.

1. Applicant does not agree. Applicant offers to install a minimum 15' wide paved road using 2" of blacktop.

2. Applicant will provide 15 exterior parking spaces (not including garage). Applicant will not agree to restrict the number of patients.

3. Applicant ~~does not agree~~. Applicant will provide ~~only~~ a privacy fence* from the garage to the private entrance road, along the northwest side of the property. Applicant ~~claims there is not sufficient room for the double row of screening requested~~. Applicant claims the rear of the property is heavily wooded and all this natural screening will remain, except that which it will be necessary to clear in order to provide the 15 parking spaces.

4. Agreed. ** with a solid, opaque surface*

5. Agreed, except for requirement that lights be turned off at 10:00 P.M. Applicant suggests that the original proposed lighting detail for a post-type light was done because it looks residential in character. Applicant feels that the light fixtures required by the Planning Board will make the premises look more like a business. However, applicant will install the type fixtures specified by the Planning Board, if the Board persists on this requirement.

6. Agreed. Applicant to sign General Release and it will be held in escrow by Alan S. Lipman, Esq. until such time as the applicant secures a Certificate of Occupancy.

7. Agreed.

LAW OFFICES
FABRICANT & LIPMAN
ONE HARRIMAN SQUARE
POST OFFICE BOX 60
GOSHEN, NEW YORK 10924

HERBERT J. FABRICANT (1915-1987)
ALAN S. LIPMAN

914-294-7944
FAX (914) 294-7889

October 31, 1989

Daniel S. Lucia, Esquire
Temple Hill Road, R.D.#2
New Windsor, New York 12550

Re: Windsor Counseling v. Planning Board
of the Town of New Windsor

Dear Dan:

Following our dialogue on Friday last, I had an opportunity to speak to my client.

At this time, she is prepared to pave the private roadway to a width of fifteen (15') feet and to apply three (3") inches of blacktop. She is not prepared to agree to any time limit for the exterior lighting. Frankly, I do not understand why the Town seeks to impose this restriction because the lands opposite their property are zoned and used commercially; the lands to the rear are zoned commercial and although used residentially are very adequately screened and the lands next to the front parking area will be screened from that lighting.

Please get back to me.

Very truly yours,



ALAN S. LIPMAN

ASL/bl

rec'd
11/2/89

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

December 5, 1989

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Mr. Schiefer:

Following my last meeting with the Planning Board members, I advised Alan S. Lipman, Esq. by letter of November 9, 1989 that the Board was adamant on not reducing the road width from 18' to 15' since it involved a health and safety issue.

I received a telephone call from Mr. Lipman yesterday and he reported that his client had a paving contractor look at the job. The paving contractor claims that he cannot pave more than a 17' width in places because of existing trees on both sides of the road. He claims that if the road is to be crowned and allow for a 1' gutter on each side, the paved surface could be no more than 15' wide. He further claims that the existing traveled way is no more than 12' wide.

Mr. Lipman asked that I make the Board aware of these problems. Even assuming that the concerns raised by the paving contractor are accurate, I am not sure if the Board wishes to further compromise its position on this issue. The Board has previously reduced the required road width from 20' to 18'.

I will be happy to discuss this matter further with the Board and I will respond to Mr. Lipman based upon your advice.

Mr. Carl Schiefer

Page Two

December 5, 1989

Best wishes for the holidays.

Very truly yours,

Daniel S. Lucia

DSL:rmf

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Joseph P. Rones, Esq.
Mark J. Edsall, P.E.

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

December 14, 1989

Alan S. Lipman, Esq.
Fabricant & Lipman
One Harriman Square
P. O. Box 60
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Alan:

I discussed the issues you raised during our December 4, 1989 telephone conversation with the Planning Board members in executive session last night.

Furthering our discussion of settlement, all without prejudice: The Planning Board will reduce the required road width to 17'. The entire 17' wide road surface must be paved; there need be no provision for gutters. As we discussed previously, the 17' wide road must be paved with one 3" layer of dense binder, type 3 (or, if your client prefers, it can use 3" of blacktop) with a sound base of shale. I believe we have reached an agreement previously on all other issues.

Please review this with your client. I believe that we ought to have the basis for a mutually agreeable settlement here. Please advise me of your client's position. Naturally I would like to resolve this before it becomes necessary for me to perfect the appeal of Justice Silverman's October 6, 1989 Decision/Order.

Best wishes for the holidays.

Very truly yours,

Daniel S. Lucia

DSL:rm

cc: Mr. Carl Schiefer
Hon. George A. Green
J. Tad Seaman, Esq.
Joseph P. Rones, Esq.

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

November 9, 1989

Alan S. Lipman, Esq.
Fabricant & Lipman
One Harriman Square
P. O. Box 60
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Alan:

I discussed your October 31, 1989 letter with the Planning Board members in executive session last night.

Continuing our discussion of settlement, all without prejudice: The Planning Board does not wish to reduce the road width from 18' to 15'. They are adamant on this point since they believe it is a health and safety issue, given the intensity of use of the premises by your client. The Board's feeling is that a 20' wide road is warranted to allow passage for a fire truck in the event that one lane is blocked. In a spirit of compromise, and in an effort to settle this matter, they reduced the required width to 18'. However, they are unwilling to reduce it more than that.

The Planning Board has agreed to eliminate the requirement that all exterior lights be turned off by 10:00 P.M.

Thus it appears that we have been able to resolve all issues, except for the road width. If you can prevail upon your client to compromise and install an 18' wide road with the 3" of paving we discussed, I think we can achieve a mutually agreeable settlement of this protracted matter.

Please review this with your client and advise me of its position.

Alan S. Lipman, Esq.

Page Two

November 9, 1989

Thanks for your cooperation in this matter.

Very truly yours,

Daniel S. Lucia

DSL:rnd

cc: Mr. Carl Schiefer
Hon. George A. Green
J. Tad Sessman, Esq.
Joseph P. Rones, Esq.

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

April 10, 1990

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor

Dear Mr. Schiefer:

I recently received a telephone call from Alan S. Lipman, Esq. in which he advised me that his client's architect apparently was able to resolve with Mike Babcock the problems he had about complying with the code upon the conversion from residential to office use or occupancy. Thus the applicant apparently now concedes that it must meet the requirements for facilities for the physically handicapped.

The upshot of this is that, after the necessary physical changes are made in the building, the applicant feels that the waiting room will be inadequate. Thus the applicant now wants to convert the garage into office space.

This obviously will require that a new site plan be presented to the Planning Board. In addition, the increased floor area will require additional parking spaces. It is this last question which Mr. Lipman asked me to address to the Board.

The applicant's site plan, last revised Feb. 10, 1989 (partial copy attached), shows 7.66 parking spaces provided (without including the garage in the computation) and 12 spaces provided. The terms of the settlement we have agreed upon call for the applicant to provide no less than 15 exterior parking spaces. Mr. Lipman feels that this is more than adequate even if the area of the garage is now added to the plan.

My question to the Board is: Do we wish to hold to the 15 agreed spaces if the garage area is added to the office space? Or, if the 15 spaces represented seven more spaces than were called for by the floor area, do you want to require that the applicant add sufficient spaces to continue to provide seven more spaces were required?

Mr. Carl Schiefer

Page Two

April 10, 1990

Please let me have your advice on this and I will respond to Mr. Lipman's question.

I have not yet received from Mr. Lipman his proposed stipulation of settlement to dispose of the above entitled proceeding, which will make our appeal of Justice Silverman's January 8, 1990 Order moot.

I just received in yesterday's mail from the Appellate Division a notice of a pre-argument conference to be held on April 30, 1990 (copy enclosed). Hopefully this will prompt Mr. Lipman to wrap up the stipulation of settlement and save both sides the time and expense of perfecting the appeal.

If you have any questions, please do not hesitate to call me.

Very truly yours,

Daniel S. Lucia

DSL:rmd
Enclosures

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq..
Mr. Michael Babcock

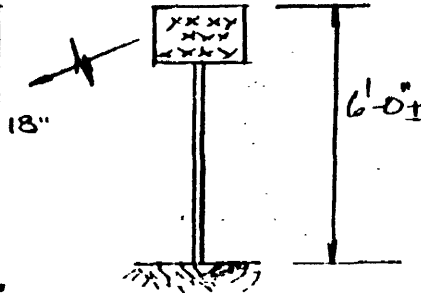
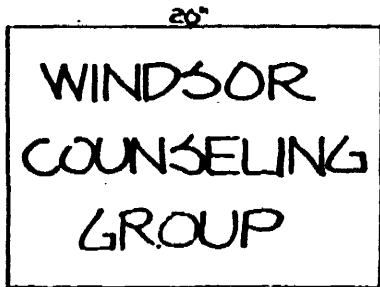
PARKING ANALYSIS

BUSINESS & PROFESSIONAL
OFFICES: 1 SPACE PER
200 S.F. OF FLOOR AREA.

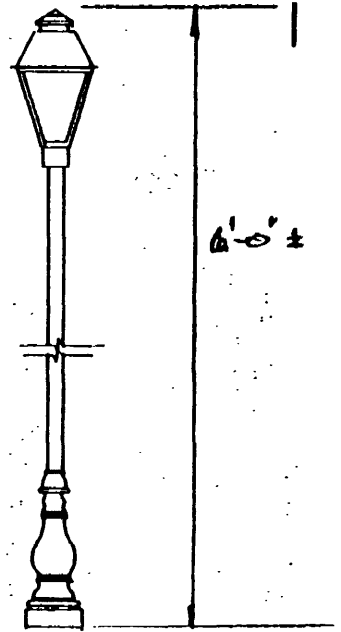
FLOOR AREA = 1532.7 S.F.

$$\frac{1532.7 \text{ S.F.}}{200 \text{ S.F.}} = 7.66 \text{ SPACES REQUIRED}$$

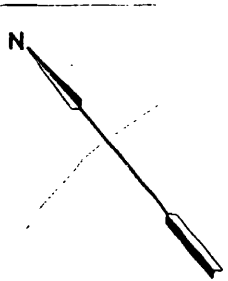
12 SPACES PROVIDED



24' MIN.
SIDE
WIDTH



EXIST. LIGHT DE
N.T.S.



S19-B4-L51
N/F TOMASHEVSKI
L 1084 P828

S19-B4-L50
N/F BRYANT & MORRISON
L 2179 P 1089

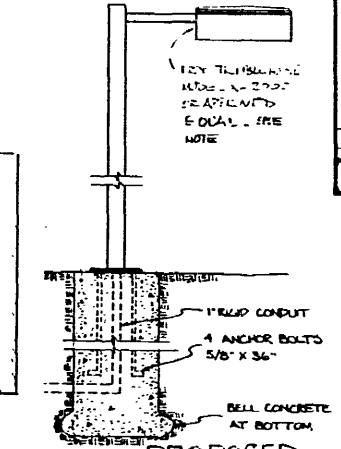
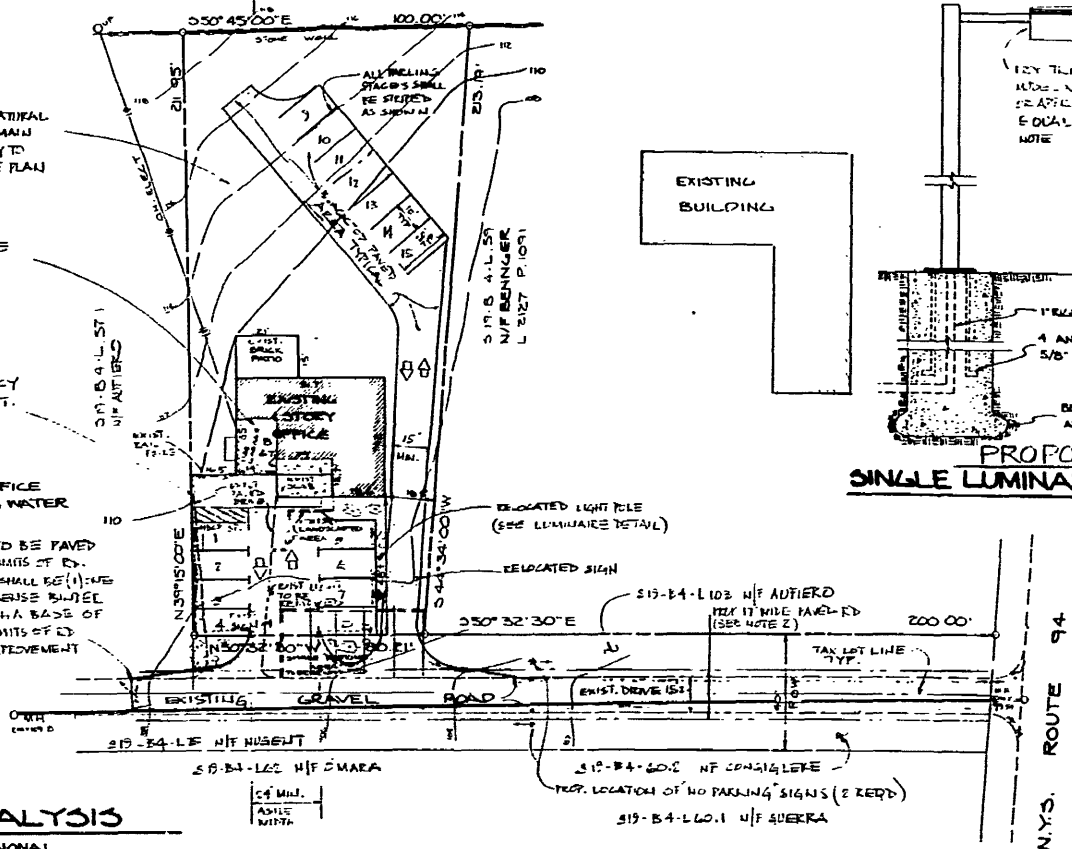
NOTE: PROPOSED LIGHTING TO BE
DIRECTED DOWNWARD WITHOUT GAZE
BEYOND THE PROPERTY BOUNDARIES.

NOTE: ALL EXISTING NATURAL
SCREENING SHALL REMAIN
EXCEPT AS NECESSARY TO
IMPLEMENT THIS SITE PLAN

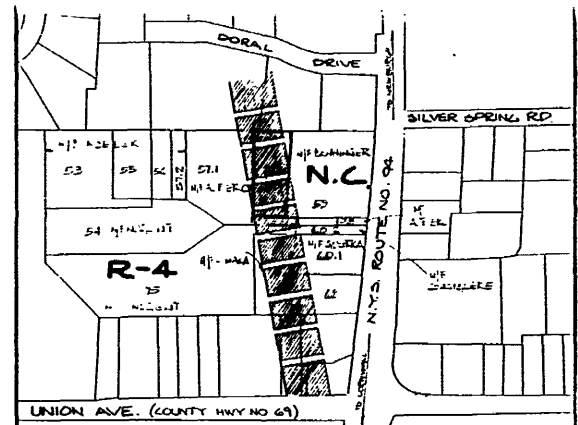
EXISTING ONE-CAR GARAGE
TO BE CONVERTED TO
OFFICE SPACE

FEET 4' HIGH OPAQUE PRIVACY
FENCE INSTALLED FROM EXIST.
GARAGE TO PRIVATE-
ENTRANCE ROAD

- NOTE:
- EXISTING 1 STORY OFFICE
SERVED BY EXISTING WATER
& SEWER
 - EXISTING GRAVEL DRIVE TO BE PAVED
FROM N.Y.S. E.T. 04 TO THE LIMITS OF E.D.
INTERVEMENT. DRIVEWAY SHALL BE (1) ONE
(2) THREE INCH LAYER OF HOUSE BUILT
TYPE 2 OR EQUIVALENT WITH A BASE OF
SHALE. NO EARTHWORK UNITS OF E.D.
NEED BE PROVIDED



**PROPOSED
SINGLE LUMINAIRE DETAIL**



VICINITY MAP

SCALE: 1" = 200'

ZONING DATA

DISTRICT: N.C. (USE: A-9 BUSINESS, PROFESSIONAL OR GOVERNMENTAL OFFICES)	REQ'D.	PROVIDED
MIN. LOT AREA = 10,000 S.F.	100	19,116'
MIN. LOT WIDTH = 100	40'	85'
MIN. FRONT YD. = 40'	15'/35'	46'
MIN. SIDE YD. = 15'/35'	15'	16'/35'
MIN. REAR YD. = 15'		106'

TAX MAP NO.

SECTION: 19
BLOCK: 4
LOT: 5B

DEED

LIBER: 2275
PAGE: 326

RECORD OWNER & DEVELOPER

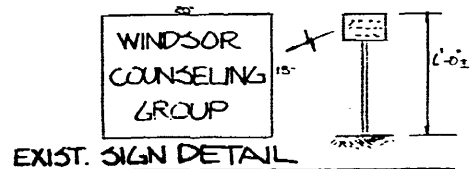
WINDSOR COUNSELING GROUP

TOTAL TRACT AREA

19,116.3 S.F.

PARKING ANALYSIS

BUSINESS & PROFESSIONAL
OFFICES: 1 SPACE PER
200 S.F. OF FLOOR AREA.
FLOOR AREA = 1,840 S.F.
 $1,840 \text{ S.F.} \times \frac{1}{200 \text{ S.F.}} = 9.2 \approx 9 \text{ SPACES REQUIRED}$
15 SPACES PROVIDED



EXIST. SIGN DETAIL

NTS

GERALD ZIMMERMAN P.E., L.I.C. NO. 47391

SHEET 1 OF 1		SITE PLAN FOR WINDSOR COUNSELING GROUP	
REVISIONS		SCALE: 1" = 30'	JOB NO. 05-196
6-13-88	1	DATE: 6-10-87	DRAWN BY: J.F.
JUN 7, 1988	2	TOWN OF NEW WINDSOR	
JUN 14, 1988	3	ORANGE COUNTY, NEW YORK	
FEB 10, 1989	4	ZIMMERMAN ENGINEERING & SURVEYING, P.C.	
MAY 14, 1990	5	RT. 17M HARRIMAN, N.Y.	

WINDSOR COUNSELING GROUP SITE PLAN (87-53) QUASSAICK AVENUE

Alan Lipman, Esq. and Daniel Lucia, Esq. came before the Board representing this proposal.

MR. SCHIEFER: We have no comments to review from our engineer. He doesn't really know what you want.

MR. LUCIA: When I last met with the Board, I had presented to you at that time a copy of revision 5 of the applicant's site plan dated May 14th of 1990. And I think I had sent the Board members a copy. That revision incorporated all the changes which we had agreed to in settlement of this matter and I think all we need is to have that site plan formally presented to the Board to be stamped and a stipulation signed by the parties.

MR. MC CARVILLE: Not stamped but reviewed.

MR. LUCIA: We had agreed to certain changes which were made.

MR. SCHIEFER: Do you have the site plan? Do you have a copy?

MR. LUCIA: I have a photocopy of it.

MR. SOUKUP: Did Myra get to you today with my question?

MR. LUCIA: No.

MR. SOUKUP: I understand the map was part of the stipulated agreement between the parties with the judge, right?

MR. LUCIA: That is correct.

MR. SOUKUP: Has that been signed and filed?

MR. LUCIA: No, that is the map that is to be--

MR. SOUKUP: Has the stipulation been signed and filed?

MR. LUCIA: No, we are going to do it simultaneously.

MR. SOUKUP: Why do we have to sign a map if it's going to be part of an agreement to be signed by a judge?

MR. LUCIA: Simply for convenience to get the thing done. The judge is going to enter an order on the stipulation.

MR. SOUKUP: Whatever is in the order becomes a force of law, no need for the Board to act further.

MR. LUCIA: The Board is the only entity that can sign that map. The judge cannot force a map to be approved by the Board.

MR. SOUKUP: He can force subdivisions to be done, why can't he approve a map?

MR. KRIEGER: He has the power to but it has to be before him legally, he can only decide those items which are formally before him that particular issue which would be, you know, requesting that particular relief and that particular issue is not in front of him and him, by the way, bear in mind him, I think if I remember correctly is the Appellate Division so you have further limitations on what they can do but it's just a ministerial thing because it isn't technically in front of him so he can't sign it on this particular application. It will require a whole new legal proceeding and amendment of the pleadings to give him the power to do it. Which could be done but it's certainly a lot more expensive and cumbersome for everybody involved.

MR. SCHIEFER: If we can avoid all of that with the signing of this map and no one has any objection to the map as it exists, I'd like to see it signed and ended.

MR. DUBALDI: I have not yet seen a map of this.

MR. SCHIEFER: I am requesting that right now. I have some maps here, I don't know if these are right.

MR. LUCIA: I don't think the Board has seen an original of the revision 5 of the maps.

MR. SCHIEFER: I am going to invite the Board members to come up since this is the only copy we have. I'd like to get a joint opinion from the attorneys for all parties concerned what the recommendation, what the procedure is. I'd like Mark Edsall to review the map, make sure all the things that we agreed to are on there and nothing new and if that is done, we are not going to have much choice, we are going to sign the map because we have been given a court order to do it.

MR. EDSALL: My suggestion before you sign the map is that you proceed and close SEQRA and also since it's part of the procedures under Local Law for signing, you determine if you want or do not want a public hearing. Previously, the Board decided they wanted one but they had not held it to date so you should--

MR. SCHIEFER: What can a public hearing do?

MR. EDSALL: I am not saying either way.

MR. SCHIEFER: Once we have been told by a judge this is what it

is going to be, what does a public hearing accomplish?

MR. KRIEGER: It creates a lot of controversy.

MR. LANDER: Other than that.

MR. KRIEGER: Legally, I don't think the worst case the best thing that it could accomplish is nothing other than a waste of time and efforts. The worst case that it could accomplish it could put the Planning Board in even more of a difficult position that it is in now. Which is not the, an unreasonable expectation given the warmth with which many people view this. I think if it can be--

MR. DUBALDI: How can a public hearing put us in a worst position?

MR. SCHIEFER: What will it accomplish, we have been told by the court what you are going to do.

MR. SOUKUP: Let the court do what they want to do, sign the map.

MR. SCHIEFER: This is the reason we have three attorneys here, let them tell us what has to be done.

MR. SOUKUP: The map has been an intricate part of the application and the problem with the application since they won. I can't believe the map is not entered as evidence in the court records in some form or manner. I can't believe that when the stipulation is entered into that map doesn't become part of that agreement and when the judge signs that agreement, it's signed.

MR. LUCIA: If I could just back up and clarify. Yes, the map is part of the Article 78 proceeding, an earlier version of the map. What happened logistically is that the applicant came in with the map. This Board took a look at it and said you need a variance, refer the matter over to the Zoning Board of Appeals and the applicant then brought this Article 78 proceeding saying basically, this is an arbitrary and capricious decision. There isn't any variance needed here. The problem from the Board's standpoint is if that map is signed or is ordered filed by the judge, you can, you are not going to have the protection for the neighbors that have now been incorporated on revision 5 of the map. This Board never actually reviewed that initial map in terms of adding mitigating factors to the map. So, if that map is ultimately ordered by the court is going to be one that protects the neighbor far less than what has now been offered by the applicant.

MR. SOUKUP: Doesn't the map on the board represent the terms of the stipulation that's being entered into?

MR. LUCIA: It does but includes many mitigating factors that never came before this Board.

MR. SOUKUP: That is the whole purpose of the agreed to stipulations, the map reflects the results of that negotiation.

MR. LUCIA: That is correct.

MR. SOUKUP: Just like the written word of the stipulation reflects the result of that negotiation, what is the difference, I don't see it.

MR. SCHIEFER: Are you convinced that reflects it, I don't know.

MR. SOUKUP: I don't know.

MR. SCHIEFER: That is why I am asking Mark to tell me that it is in the records what we agreed to. What was negotiated out, if that is what is on there, I have no problem.

MR. SOUKUP: I have to tell you if I were Chairman, I'd have trouble signing it because of the lack of professional review tonight and because of the lack of full knowledge of the court case proceeding.

MR. MC CARVILLE: I agree with Vince on that because the map that we looked at isn't, doesn't have the parking in the rear yard that I am aware of so I have a different map.

MR. LUCIA: It did, it had 12 spaces and one of the mitigating factors this Board asked for was that we increase it to 15 which they did. I have been over revisions on this map, I think, as you know with the Board probably a half a dozen times.

MR. SCHIEFER: All I'm asking is that Mark verify the things that this Board agreed to is on this map. This map is what we agreed to. The legal aspects of it, that's, I am not even going to--

MR. SOUKUP: I'd like our attorney to put a memo in the file to direct us as to his opinion also for the same reason that we are getting an engineering review.

MR. SCHIEFER: Okay.

MR. EDSALL: I will itemize the changes since as Dan indicated, he came in and discussed certain changes through this entire legal procedure. I will itemize the changes that I can find from the original map through this time.

MR. SCHIEFER: Any deviation from the agreement I am going to do battle but ask the public input on what the judge said you are

going to do, it's a waste of time.

MR. LANDER: You are asking whether or not there should be a public hearing or not?

MR. MC CARVILLE: At the very least, this Board should close out the SEQRA process and determine if a public hearing is necessary. You just don't leave something lurking.

MR. EDSALL: Close those issues at least procedurally.

MR. SCHIEFER: How do you, how would you close the SEQRA process?

MR. MC CARVILLE: That is what the attorneys are going to tell us.

MR. SCHIEFER: I don't want to introduce any issues.

MR. EDSALL: My biggest concern on a public hearing issue, the Board has voted in the past that they are going to have a public hearing.

MR. LIPMAN: You did have a public hearing.

MR. EDSALL: I have no record of one being held. There were regular public meetings that turned into public hearings.

MR. LANDER: Do we have anything on record?

MR. SCHIEFER: Not to my knowledge. Again, we can ask them to see if there was a public hearing. We can find that out quick enough.

MR. BAEBECK: Yes, we can.

MR. KRIEGER: As far as closing out the SEQRA process, I first of all I have got to be put up-to-date and advised as to where the SEQRA process stands now. I don't know.

MR. EDSALL: My last record indicates that on June 2th, 1988, the Board voted to hold a public hearing and they intended to schedule it at a later date. I have no record of any meeting being held after that. Obviously, it's been quite a while if happened, I just don't have a record of it.

MR. SCHIEFER: Let the attorney tell us how we close this out. Get the information. I assume we did not have a public hearing, you feel as you want to vote on it now, how--I am going to vote, I have no objection to polling the Board if you want a public hearing and we have already proposed that we had one possibly we should address it whether or not we are going to continue

with that.

MR. BABCOCK: Can I add one thing. As far as fees are concerned, if we want to make sure that that's been straightened out before the map is signed, that is our policy, I don't know how that can be taken care of before hand because it won't happen at this meeting so maybe we can straighten that out.

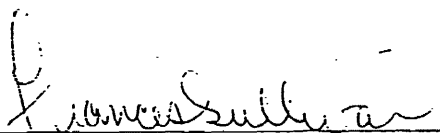
MR. LUCIA: We can have it as a discussion, additional item as we, when we get together.

MR. SCHIEFER: I want you three to get together. How do we close out SEQRA process, no way do I want this Board to challenge anything that's been agreed to. I want this map represents what the agreement is and then we will handle it internally and whether or not we are going to have a public hearing. There is some mixed opinion. My personal opinion is how are you going to change what the judge is going to do.

MR. LUCIA: Well, we will get together and resolve it.

Being that there was no further business to come before the Board a motion was made to adjourn the meeting by Mr. McCarville seconded by Mr. Dubaldi and approved by the Board.

Respectfully submitted;


FRANCES SULLIVAN
Stenographer

PLANNING BOARD : TOWN OF NEW WINDSOR
COUNTY OF ORANGE : STATE OF NEW YORK

-----X
In the Matter of Application for Site Plan ~~Subdivision~~ of
Sharon & Neil Belinsky d/b/a Windsor Counseling Group,
Applicant.

AFFIDAVIT OF
SERVICE
BY MAIL

-----X
STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

MYRA L. MASON, being duly sworn, deposes and says:

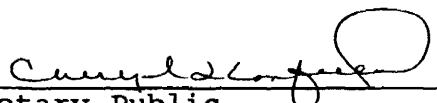
That I am not a party to the action, am over 18 years of age
and reside at 350 Bethlehem Road, New Windsor, NY 12553.

On June 18, 1991, I compared the 10 addressed
envelopes containing the attached Notice of Public Hearing with
the certified list provided by the Assessor regarding the above
application for Site Plan ~~Subdivision~~ and I find that the
addressees are identical to the list received. I then mailed the
envelopes in a U.S. Depository within the Town of New Windsor.

Myra L. Mason
Myra L. Mason, Secretary for
the Planning Board

Sworn to before me this

18th day of June, 1991


Notary Public

CHERYL L. CANFIELD
Notary Public, State of New York
Qualified in Orange County
4861654
Commission Expires December 28, 1992

AFFIMAIL.PLB - DISC#1 P.B.



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553

June 18, 1991

Sharon & Neil Belinsky
d/b/a Windsor Counseling Group
194 A Quassaick Ave.
New Windsor, NY 12553

Re: Tax Map Parcel 19-4-58
Owner: Sharon & Neil Belinsky
d/b/a Windsor Counseling Group

Dear Mr. & Mrs. Belinsky:

According to our records, the attached is a list of all properties contiguous to the above mentioned property.

The charge for this service is \$25.00. Please remit same to the Town of New Windsor, Town Clerk, care of Myra Mason.

Sincerely,

L. Cook/cad

LESLIE COOK
Sole Assessor

LC/cad
Attachments
cc: Myra Mason

Elouise Bryant & Morrison Alice Brunson
2 Doral Drive
New Windsor, NY 12553

Richard F. & Patricia A. Tomashevski
4 Doral Dr.
New Windsor, NY 12553

George & George E. Aufiero
24 Vermont Drive
Newburgh, NY 12553

George W. & Barbara F. Benninger
188 Quassaick Ave.
New Windsor, NY 12553

George & George E. Aufiero
3215 Netherland Ave.
Bronx, NY 10463

LEGAL NOTICE

NOTICE IS HEREBY GIVEN that the PLANNING BOARD of the TOWN OF NEW WINDSOR, County of Orange, State of New York will hold a PUBLIC HEARING at Town Hall, 555 Union Avenue, New Windsor, New York on JUNE 26, 1991 at 7:30 P.M. on the approval of the proposed SITE PLAN (~~Subdivision of Land~~) * (Site Plan)* OF SHARON & NEIL BELINSKY d/b/a WINDSOR COUNSELING GROUP located at 194 Quassaick Avenue (Tax Map # 19-4-58) Map of the (~~Subdivision of Land~~) (Site Plan)* is on file and may be inspected at the Town Clerk's Office, Town Hall, 555 Union Avenue, New Windsor, N.Y. prior to the Public Hearing.

Dated: JUNE 18, 1991

By Order of

TOWN OF NEW WINDSOR PLANNING BOARD

Carl Schiefer

Chairman

NOTES TO APPLICANT:

- 1). *Select Applicable Item.
- 2). A completed copy of this Notice must be approved prior to publication in The Sentinel.
- 3). The cost and responsibility for publication of this Notice is fully the Applicants.

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

June 14, 1991

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Carl:

At the request of Alan S. Lipman, Esq., Judge Donald N. Silverman scheduled a conference in his Chambers, yesterday, to discuss Mr. Lipman's contention that the Planning Board was not performing its obligations under the terms of the "So Ordered" Stipulation of Settlement and Discontinuance.

I reviewed with Judge Silverman the history of this matter and the Board's action at its May 8, 1991 meeting.

Judge Silverman agreed that the Planning Board should proceed with the Public Hearing on this matter which has been scheduled for June 26, 1991. However, Judge Silverman also made it quite clear that he fully expects the Planning Board, on that same night, June 26, 1991, to close out the SEQRA process and grant final site plan approval to the applicant's site plan, Rev. 5 of 5/14/90.

As long as the Planning Board proceeds in this manner, Judge Silverman is agreeable to allowing the Article 78 proceeding to be resolved on that basis.

Judge Silverman went on to say that if the Planning Board fails to close out the SEQRA process and grant final site plan approval to the applicant on June 26, 1991, the applicant will be free to commence a new proceeding against the Planning Board to recover its actual damages, as well as costs, expenses,

Mr. Carl Schiefer

Page Two

June 14, 1991

and attorneys fees. Judge Silverman emphasized that, if the proceeding is not resolved in the above manner on June 26, 1991, there will be sanctions.

Naturally, it is my recommendation that, after the close of the Public Hearing on June 26, 1991, the Planning Board act to close out the SEQRA process and grant final site plan approval to the applicant.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Daniel S. Lucia

DSL:rmd

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Mark J. Edsall, P.E.

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

June 14, 1991

Alan S. Lipman, Esq.
Fabricant & Lipman
One Harriman Square
P.O. Box 60
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Alan:

In preparation for closing out the above proceeding on June 26, 1991, in accordance with our discussion yesterday with Judge Donald N. Silverman, I would suggest that your client contact the Town to ascertain the amount of the fees which are due on account of this application, and arrange to pay the same on or before June 26, 1991.

If you have any questions, please do not hesitate to call me.

Very truly yours,

Daniel S. Lucia

DSL:rm

cc: Mr. Carl Schiefer
Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Mark J. Edsall, P.E.



Louis Holmbeck
County Executive

**Department of Planning
& Development**

124 Main Street
Goshen, New York 10924
(914) 294-5151

Peter Garrison, Commissioner
Richard S. DeTurk, Deputy Commissioner

**ORANGE COUNTY DEPARTMENT OF PLANNING & DEVELOPMENT
239 L, M or N Report**

This proposed action is being reviewed as an aid in coordinating such action between and among governmental agencies by bringing pertinent inter-community and Countywide considerations to the attention of the municipal agency having jurisdiction.

Referred by Town of New Windsor D P & D Reference No. NWT 15 91 M
County I.D. No. 19 / 4 / 58

Applicant Windsor Counseling Group

Proposed Action: Site Plan Review

State, County, Inter-Municipal Basis for 239 Review Within 500' of NYS Rte. 94

Comments: There are no significant inter-community or county-wide concerns to bring to your attention.

Related Reviews and Permits _____

County Action: Local Determination XX Disapproved _____ Approved _____

Approved subject to the following modifications and/or conditions: _____

5/24/91

Date

CC: M.E.

Peter Garrison
Commissioner

ORANGE COUNTY DEPARTMENT OF PLANNING
APPLICATION FOR MANDATORY COUNTY REVIEW
OF LOCAL PLANNING ACTION

(Variances, Zone Changes, Special Permits, Subdivisions, Site Plans)

Local File No. 87-53

1. Municipality TOWN OF NEW WINDSOR Public Hearing Date _____

☐ City, Town or Village Board ☒ Planning Board ☐ Zoning Board

2. Owner: Name Windsor Counseling Group

Address 176 Quassaick Ave. - New Windsor

3. Applicant*: Name _____

Address _____

* If Applicant is owner, leave blank

4. Location of Site: Rt. 94 (West side)
(street or highway, plus nearest intersection)

Tax Map Identification: Section 19 Block 4 Lot 58

Present Zoning District NC Size of Parcel .44 ± Acres

5. Type of Review: _____

Special Permit: _____

Variance: Use _____

Area _____

Zone Change: From _____ To _____

Zoning Amendment: To Section _____

Subdivision: Number of Lots/Units _____

Site Plan: Use Counseling Offices

5/9/91

Date

Myca Mason, Secretary for P.B.
Signature and Title



McGOEY, HAUSER and EDSALL
CONSULTING ENGINEERS P.C.

RICHARD D. McGOEY, P.E.
WILLIAM J. HAUSER, P.E.
MARK J. EDSALL, P.E.

- ☐ **Main Office**
45 Quassaick Ave. (Route 9W)
New Windsor, New York 12553
(914) 562-8640
- ☐ **Branch Office**
400 Broad Street
Milford, Pennsylvania 18337
(717) 296-2765

1 May 1991

Daniel S. Lucia
Attorney at Law
343 Temple Hill Road
New Windsor, New York 12553

Carl Schiefer, Chairman
Town of New Windsor Planning Board
555 Union Avenue
New Windsor, New York 12553

SUBJECT: WINDSOR COUNSELING GROUP SITE PLAN
REVIEW OF FINAL PLAN W/R/T COURT STIPULATION

Gentlemen:

Pursuant to the request of Dan Lucia, I have completed my review of the site plan dated 6-10-87, with latest revision of May 14, 1990, with respect to the conditions of the Stipulation of Settlement and Discontinuance prepared for the Supreme Court of the State of New York, County of Orange. Based on my review, it is my opinion that the six (6) revisions required to the site plan, as referenced in Items 1a-1f of the Stipulation, have been appropriately noted/corrected on the aforementioned revised plan.

As such, the Planning Board may wish to proceed based on the conditions of the Stipulation, and the direction provided in Mr. Lucia's letter dated 28 March 1991. Should you require any additional information concerning this matter, please do not hesitate to contact the undersigned.

Very truly yours,


McGOEY, HAUSER and EDSALL
CONSULTING ENGINEER, P.C.

Mark J. Edsall, P.E.
Planning Board Engineer

MJEmk

A:LUGIA.mk

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

May 24, 1991

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Carl:


I enclose herewith for your file a copy of Alan S.
Lipman's May 22, 1991 letter to Judge Silverman.

Unless you feel otherwise, I will not respond thereto.
This repeated exchange of correspondence threatens to take on the
proportions of the unprecedented four sur-reply affidavits which
were served in connection with the motion to dismiss this
Article 78 proceeding.

As of this writing, Judge Silverman has not scheduled
any conference on this matter as Mr. Lipman had requested. Thus
the Planning Board should proceed with plans to hold a public
hearing on this matter on June 26, 1991.

If you have any questions, please do not hesitate to
call me.

Very truly yours,


Daniel S. Lucia

DSL:rmd
Enclosure

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Mark J. Edsall, P.E.

5/28/91 @

LAW OFFICES
FABRICANT & LIPMAN
ONE HARRIMAN SQUARE
POST OFFICE BOX 60
GOSHEN, NEW YORK 10924

HERBERT J. FABRICANT (1915-1987)
ALAN S. LIPMAN

(914) 294-7944
FAX (914) 294-7889

May 22, 1991

Honorable Donald N. Silverman
County Court of the County of Westchester
Westchester County Courthouse
111 Grove Street
White Plains, New York 10601

Re: Windsor Counseling Group v.
Town of New Windsor Planning Board
Index No. 3608/89

Dear Judge Silverman:

I now have before me a letter which Dan Lucia sent to you on May 15, 1991. I want to make it absolutely clear, that I have no problem with Mr. Lucia or the fashion in which he has counselled the Planning Board. He has been entirely cooperative and helpful. My problem is with his client.

When the approval of my client's site plan was "so ordered" by your Honor on April 5, 1991, it seemed clear to me that all of the ordinary prerequisites to such an approval were eliminated.

Particularly, a public hearing (not mandated by the zoning ordinance), if conducted, can only lead to suggestions for change in a plan to which both parties to this proceeding are already committed. If the Planning Board wishes to provide the "public" with an explanation for the mandated approval, it can surely address an explanatory letter to those to whom notice of such a hearing would be directed. No public hearing is necessary or even appropriate.

If SEQRA is a process which must be closed out, the "so ordered" commitment to approve the site plan could not have been made without a commitment to adopt a "negative declaration" under SEQRA. No public hearing is necessary for this purpose.

If a referral to the Orange County Department of Planning was necessary, it should have been made months (if not years) ago. Certainly, the referral should have been made on the past occasions

(Cont'd.)

rec'd
5/23/91

FABRICANT & LIPMAN

Honorable Donald N. Silverman

- 2 -

May 22, 1991

that the Planning Board adopted resolutions to hold public hearings. The failure to do so is surely obviated by the adoption of a resolution of approval by a majority of the Planning Board, plus one vote.

I sincerely believe that the Planning Board is not acting in the spirit of this settlement. Its past practice in my client's direction certainly give me (and my client) adequate reason to be concerned and apprehensive. My client is being delayed in making arrangements for paving the private road shown on the plan and will very likely incur a greater expense for this project as a consequence of this delay.

There is nothing for the Planning Board to do other than to adopt a resolution to approve the site plan. I believe that the respondent should be directed to issue its approval in accordance with the "so ordered" stipulation and that a conference will provide the forum for that direction. I therefore, respectfully request that such conference be scheduled.

Respectfully,

ALAN S. LIPMAN

ASL/ma.

cc:

Mrs. Sharon Belinsky
Windsor Counseling Group
194A Quassaick Avenue
New Windsor, New York 12550

Daniel S. Lucia, Esquire
343 Temple Hill Road
New Windsor, New York 12550

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

April 24, 1991

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Carl:

I have reviewed the site plan in connection with the above matter which Gerald Zimmerman has delivered to you with his letter of April 17, 1991.

This appears to incorporate all the mitigation measures required by the Stipulation of Settlement and Discontinuance and thus is entitled to site plan approval, subject to the concurrence of Mark and Andy.

In addition, at this time, the three matters raised in my March 28, 1991 letter to you (copy attached) should be addressed by the Planning Board.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Daniel S. Lucia

DSL:rm
Enclosure

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Mark J. Edsall, P.E.

Myra, put this matter on the discussion agenda for the next meeting.

DISCUSSION: WINDSOR COUNSELING SITE PLAN (97-53)

Daniel Lucia, Esq. came before the Board representing this proposal.

MR. LUCIA: Good evening, I spoke with Al Lippman late this afternoon and he represents the applicant here and he has a conflict so he'll not be able to make it nor incidently will Mr. Zimmerman, who's the applicant's attorney nor will one of the applicants. Mr. Lippman authorized me to appear on his behalf.

You have before you the Windsor Counseling Site Plan last revised, revision 5 of May 14th, 1990. I have reviewed that and Mark Edsall's reviewed it and we agree that it now incorporates all the revisions that were required by the terms of the stipulation of the settlement of the Article 78 proceeding. I don't know if you have had a chance to look at it.

MR. KRIEGER: I haven't but if Mark looked at it and said it incorporates the terms than I have no reason to believe that it doesn't.

MR. SCHIEFER: Mark, do you feel this incorporates all the terms of the agreement?

MR. EDSALL: Yes, I went through the stipulation and the listing of exactly what was to be done with the plan and I believe they have accomplished everything that was agreed to.

MR. MC CARVILLE: You mean it is done?

MR. SCHIEFER: Everything has been done that was agreed to.

MR. LUCIA: We required six different mitigation measures to be shown on the site plan and they have now incorporated them in this last revision so it conforms. The work has not been done. The site plan is now in a form that I think is appropriate for you to grant site plan approval.

MR. VAN LEEUWEN: They made a lot of money.

MR. LUCIA: Before you do that, I think there are a couple of other matters that the Board should address. The Planning Board previously adopted two motions to hold a public hearing on this matter. They were adopted on June 8th of 1988 and January 25th of 1989.

I think a motion to reverse those prior two motions is in order. Just to create a little background on it for the record, public hearings are discretionary and I don't see any problem in your reversing those two prior motions on this issue. Subsequent to your adoption of those two motions, to hold a public hearing, the matter was litigated by the applicant. As that litigation progressed, the Planning Board and the applicant agreed to settle which we now have a filed stipulation, in fact a so worded stipulation on it that stipulation required the applicant to take a number of mitigation measures to improve the site and reduce the impact of the proposed use on the neighbors. I think at this point, those mitigation measures which are in the stipulation and the applicant has now put on the plan adequately protect the public so I think a public hearing at this stage of the game becomes superfluous.

MR. MC CARVILLE: Are you sure? I mean, any other applicant that came in and didn't sue us and came in with a plan would go through a public hearing. It's taken them many letters and time and everything else to accomplish what an average application would cover, you know I don't see why a public hearing isn't in order.

MR. SCHIEFER: What would it achieve if there was anything contrary to what we have been told has been agreed upon now it might be nice to advise the neighbors, might be nice to inform them but what kind of action are you going to take other than what you have already dictated to take?

MR. LANDER: You already had a public hearing, zoning had one.

MR. LUCIA: The other thing I might remind you of--

MR. VAN LEEUWEN: I make a motion we have a public hearing. Let him go through some more crap, he's made us do it.

MR. MC CARVILLE: Just because it's been in litigation--

MR. LUCIA: The reason I mentioned this is because you have had at least six separate meetings on this, previously some of them you took input from the public, although it was not a public hearing. So, certainly the Board is aware of the neighbor's concerns and that is exactly what we addressed in compelling the six mitigation measures. Now, it's your discretion at this point.

MR. DUBALDI: Motion is on the floor, Mr. Chairman.

MR. SCHIEFER: We have two gentlemen. What do you want to do?

MR. DUBALDI: I think we should have one.

MR. LANDER: I don't think we need one.

MR. MC CARVILLE: What do you think, Carl?

MR. SCHIEFER: I don't think we need one. What will it achieve?

MR. LANDER: Zoning already had one.

MR. SCHIEFER: Tell me what it is going to achieve?

MR. KRIEGER: If I may--

MR. MC CARVILLE: It's going to achieve the simple fact that there is a procedure that every citizen in the Town of New Windsor, every landowner has to adhere to in changing the use of property in a residential area or altering a property that may have pre-existing use. And I think that just because these folks brought this thing over a couple years. And through the courts and everything else, does not say that they should be treated any differently than anybody else.

MR. LANDER: Absolutely not.

MR. BABCOCK: Can I ask a question? Possibly maybe Dan can know, would you know whether the neighbors are aware of the agreements that are made between New Windsor Counseling Group?

MR. VAN LEEUWEN: People on the drive are not aware.

MR. MC CARVILLE: I think the folks on the top of the hill are perhaps aware but the people that are adjacent and to the rear of it do not know.

MR. KRIEGER: For purposes of information, if nothing else--

MR. SCHIEFER: The only purpose I can see for the public hearing is to advise the neighbors of what is going to be. They can make their comments. They won't have any impact.

MR. MC CARVILLE: Why wouldn't they have impact? That's the purpose of the public hearing.

MR. SCHIEFER: It's already been agreed through litigation.

MR. VAN LEEUWEN: Well, we'll still hear the neighbors complain still.

MR. SCHIEFER: I may change, I have no problem if you recognize all you're going to do is just to advise the neighbors of what's going on, I have no problem with it.

MR. LUCIA: I think the danger is and I'll be very frank with you, it took a long time to get this stipulation to settle this action and we really, you know, the applicant was not really in accord with the agreement we are trying to reach but his attorney talked him into it. The very real danger and this should not be a reason for you to vote pro or con on it, if after a public hearing you decide to impose more stringent measures than what's been ordered by the Court, you're going to get another Article 7^B because they are going to claim that additional is certainly--

MR. VAN LEEUWEN: I don't think we are looking for that, okay, I think what we are looking for is to let the public know what's going on so there's nothing devious done behind their backs and let Mr. Lippman come back and go through the motions. Let him, that's exactly why I'm going to go for it, he broke ours, God damn it I'm going to break his. That's just the way I feel.

MR. MC CARVILLE: It's to the point where if these people proceeded with the application, we're just to the point we're going to decide whether we are going to have a public hearing.

MR. SCHIEFER: I have no problem with having a public hearing to advise and inform people but anything beyond that, I think you're foolish.

MR. VAN LEEUWEN: I don't think we're going to go beyond that. Now, what could happen, if the people didn't know about that, they can come back at us and say you didn't have a public hearing then we'd have a problem.

MR. SCHIEFER: If you recognize that fact, it's for informing them, they can make their comments but you

are going to, right at the beginning you are going to tell them this is the agreement that's been reached through litigation and you're comments are going to have very, very little influence because I don't want to drag this through the courts a second time.

MR. BABCOCK: I think what I am saying is if you do, it does not really matter to me. It would eliminate me explaining this to every neighbor.

MR. SCHIEFER: Based on that, Mike, I have no problem with it.

MR. MC CARVILLE: Okay.

MR. VAN LEEUWEN: I will make a motion we have a public hearing.

MR. DUBALDI: I'll second it.

MR. SCHIEFER: You want to spend this town's money.

MR. VAN LEEUWEN: We're spending his money but Dan doesn't have to be there for that.

MR. LUCIA: If we get involved in the nitty gritty of the stipulation, I should be here to defend why the Planning Board agreed to the stipulation measures.

MR. VAN LEEUWEN: We are going to go along with the measures, as far as I'm concerned right now, as far as I'm concerned, I'm going to go along but I do want to have a public hearing. I do want the people to know otherwise they can come back to us.

MR. SCHIEFER: We're voting on a motion has been made and seconded that we have a public hearing on the Windsor Counseling proposal.

ROLL CALL:

Mr. McCarville	Aye
Mr. VanLeeuwen	Aye
Mr. Lander	Aye
Mr. Dubaldi	Aye
Mr. Schiefer	Aye

MR. VAN LEEUWEN: None of the things change but the people have a right to know so they can't come back and say what are you guys doing.

MR. EDSALL: Can you set a date for it?

MR. SCHIEFER: First available time.

MR. EDSALL: As soon as they are ready.

MR. BABCOCK: Dan, are you going to notify Mr. Lippman of this?

MR. LUCIA: I'll call him tomorrow.

MR. LANDER: Isn't this graveled road supposed to be blacktopped?

MR. VAN LEEUWEN: Yes, 20 foot wide.

MR. EDSALL: They call out paving.

MR. SCHIEFER: I have no problem with you telling him what we are going to do with the public hearing to inform these basically to inform these people.

MR. LUCIA: Couple of other things that I should mention that we need to close out before they grant site plan approval also SEQRA should be closed out. To date, the Planning Board has taken lead agency status twice, I believe, but we need to close out the process. The applicant has to pay all required fees on the proceeding. I do not know--

MR. MC CARVILLE: I make a motion we declare a negative declaration.

MR. EDSALL: I'd wait for the public hearing.

MR. LUCIA: I also do not find in the file that it was ever referred to the County. I'm not sure and I'll defer to Andy and Mark, whether the County referral is needed. The property does not front on Route 94.

MR. EDSALL: It's within 500 feet.

MR. SCHIEFER: Send it to the County and if they object, they'll get sued.

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

May 15, 1991

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Carl:

I enclose herewith for your records in connection with the above matter a copy of the Stipulation of Settlement and Discontinuance, signed by all parties and their respective attorneys, which has been "So Ordered" by Hon. Donald N. Silverman, Acting J.S.C., on 4/5/1991.

Also enclosed is a copy of Alan Lipman's May 9, 1991 letter to Judge Silverman and my response thereto of today's date.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Daniel S. Lucia

DSL:rm
Enclosures

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Mark J. Edsall, P.E.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

.....X

In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

- against -

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent.

STIPULATION OF
SETTLEMENT AND
DISCONTINUANCE

Index No. 3608/89

Name of Assigned
Judge: Hon. Donald
N. Silverman,
Acting J.S.C.

For a Judgement Pursuant to Article 78 of
the Civil Practice Law and Rules, Reversing
a Certain Decision Adopted by Respondent on
April 26, 1989.

.....X

WHEREAS, petitioner is the owner of certain premises
located at 194A Quassaick Avenue in the Town of New Windsor, Orange
County, New York, and designated on the Tax Maps of the Town of New
Windsor as Section 19, Block 4, Lot 58 (hereinafter the "premises").
The premises were acquired by deed dated November 1, 1985, recorded
in the Orange County Clerk's Office in Liber 2435 of Deeds at Page
253 on the 6th day of November, 1985; and

WHEREAS, respondent is the duly appointed Planning Board
of the Town of New Windsor, New York, appointed by the Town Board of
the Town of New Windsor, New York, pursuant to the powers vested in
it by Section 271 of the Town Law; and

WHEREAS, the premises are improved by a structure built in
or about 1983, pursuant to a building permit duly issued by the
Building Inspector of the Town of New Windsor, New York on February
8, 1983, as and for a single-family dwelling; and

WHEREAS, at the time of the acquisition of the premises by petitioner, the same were determined to be zoned neighborhood commercial (NC) by directive of the Hon. Peter C. Patsalos, J.S.C., under a comprehensive zoning ordinance adopted by the Town Board of the Town of New Windsor in or about May 1975 (hereinafter the "1975 Ordinance"); and

WHEREAS, pursuant to the provisions of the 1975 Ordinance, the premises may be used as of right for professional offices, with site development plan review and approval by the respondent under the provisions of Section 48-19 of the 1975 Ordinance; and

WHEREAS, pursuant to the provisions of Section 48-19 of the 1975 Zoning Ordinance, on or about July 15, 1987 petitioner applied to the respondent for site plan approval for the use of the premises for professional offices; and

WHEREAS, on April 26, 1989, the respondent voted to deny site plan approval for reasons related to (a) inadequate lot width; (b) improvements made to the site without site plan approval; and (c) the existence of a secondary residential use within the premises; and

WHEREAS, petitioner commenced the captioned Article 78 proceeding, seeking an order annulling and reversing the aforesaid determination of the respondent Planning Board, dated April 26, 1989, and further determining that the aforesaid premises of petitioner zoned NC do not require a variance for lot width under the provisions of the Town of New Windsor Zoning Ordinance;

NOW, THEREFORE, it is hereby stipulated by and between the parties signatory hereto and their respective attorneys in the above captioned proceeding, that whereas no party hereto is an infant or an incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of this proceeding, the above entitled proceeding is settled and the proceeding discontinued, upon the following terms and conditions:

1. The petitioner shall cause the site plan dated February 10, 1989, heretofore submitted to and denied by the respondent, to be amended in the following respects:

- a. The site plan shall exhibit a 17 foot wide paved road from New York State Route 94 to the "limits of road improvement" as shown on the petitioner's site plan dated February 10, 1989. The pavement shall be specified thereon as one three (3") inch layer of dense binder Type 3 or blacktop, with a base of shale. No gutters need be provided.
- b. The site plan shall show an opaque privacy fence four (4') feet high from the garage to the private entrance road, along the northwest side of the property.
- c. The site plan shall include a legend that the petitioner shall install two "No Parking" signs on the private entrance road, one on each side of such road.
- d. Applicant shall change the exterior light detail to reflect lighting fixtures which direct light downward without glare beyond the property boundaries of the petitioner.
- e. The petitioner shall provide fifteen (15) blacktopped and striped exterior parking spaces (excluding the parking space within the existing garage which is to be converted to office use in accordance herewith).

- f. A note shall be placed upon the plan reflecting that all existing natural screening shall remain, except as necessary to implement the site plan.

2. There shall be no time restrictions for the petitioner's use of exterior lighting nor shall the number of patients and group sizes be restricted by the number of available parking spaces, but patients shall be requested not to park within the private entrance road. During the period of time that the premises continue to be used for the purposes for which site plan approval is to be granted, there shall be no person or persons residing or domiciled at the premises.

3. The area of petitioner's building designated as "garage" on the February 10, 1989 site plan, shall be incorporated into and utilized by petitioner as professional offices. The number of offstreet parking spaces (fifteen) is determined to be adequate to accommodate the use of petitioner's entire structure for professional offices.

4. The petitioner shall execute a general release in favor of all persons involved with the petitioner's application, individually and as members of any Board of the Town of New Windsor, or as office holders of the Town, or as Town employees. The general release shall be held in escrow by Fabricant & Lipman, attorneys for the petitioner, until such time as the petitioner secures a certificate of occupancy.

5. At such time as the aforesaid changes have been made to the petitioner's site plan and submitted to and reviewed by the respondent so as to determine that the amended plan conforms in all

respects to the requirements of this stipulation, the respondent shall grant site plan approval to such amended site plan pursuant to the provisions of Section 48-19 of the 1975 Ordinance.

6. Notwithstanding the discontinuance of this proceeding pursuant hereto, the Supreme Court shall have continuing jurisdiction upon the application of any party to resolve any disputes with respect to the interpretation to be given to any of the provisions hereof and with respect to the performance by the respective parties of their obligations hereunder.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 27th day of March, 1991.

THE PLANNING BOARD OF THE
TOWN OF NEW WINDSOR, NEW YORK

By: Carl Schiefer
Carl Schiefer, Chairman

Daniel S. Lucia
Daniel S. Lucia

DANIEL S. LUCIA, ESQ.
Attorney for Respondent
Office and P.O. Address
343 Temple Hill Road
New Windsor, New York 12553
Tel.: (914) 561-7700

WINDSOR COUNSELING GROUP

By: Sharon Belinsky
Sharon Belinsky,
a Partner

FABRICANT & LIPMAN, ESQS.

By: Alan S. Lipman
Alan S. Lipman

FABRICANT & LIPMAN, ESQS.
Attorneys for Petitioner
Office and P.O. Address
One Harriman Square
P. O. Box 60
Goshen, New York 10924
Tel.: (914) 294-7944

So Ordered.

Dated: White Plains, New York
4/5, 1991

/s/ Hon. Donald N. Silverman
HON. DONALD N. SILVERMAN
ACTING SUPREME COURT JUSTICE

LAW OFFICES
FABRICANT & LIPMAN
ONE HARRIMAN SQUARE
POST OFFICE BOX 60
GOSHEN, NEW YORK 10924

HERBERT J. FABRICANT (1915-1987)
ALAN S. LIPMAN

(914) 294-7944

FAX (914) 294-7889

May 9, 1991

Honorable Donald N. Silverman
County Court of the County of Westchester
Westchester County Courthouse
111 Grove Street
White Plains, New York 10601

Re: Windsor Counseling Group
v. Town of New Windsor Planning Board
Index No. 3608/89

Dear Judge Silverman:

I write to you on the subject of the captioned matter and pursuant to your order dated April 5, 1991 as part of a stipulation of settlement dated March 27, 1991 (copy enclosed).

I am concerned at this time that both the spirit and the substance of that stipulation and order are being violated by the respondent Planning Board.

Although the stipulation is dated March 27, 1991, it was not, in fact, executed by the petitioner until April 4, 1991, and only after I was able to confirm through a clerk at the office of the Town of New Windsor that my client's site plan had already been approved at the Planning Board meeting on March 27, 1991. At that moment, I had not been able to reach Mr. Lucia who was away on a brief vacation.

Only after I had written to Mr. Lucia on April 4, 1991 (copy enclosed) was I advised that the information that I had earlier received from the clerk was incorrect and the site plan had not been approved. He asked me to make arrangements for the delivery of the requisite number of copies of the plan to the Town so that they could be approved and stamped at the meeting scheduled for on the evening of May 8, 1991. That delivery was accomplished and last week I was advised that this matter was on the Planning Board's agenda for the meeting to be held on May 8, 1991, as number "seven" of "eight" items. Mr. Lucia and I spoke briefly on Tuesday of this week, at which time I told him that a prior engagement did not permit me to appear before the Board much before 9:30 P.M. on that evening. Upon arriving at the meeting at 9:15 P.M., I was advised that the matter had already been addressed and instead of an approval a "public hearing would be scheduled".

(cont'd)

rec'd
5/10/91

FABRICANT & LIPMAN

Honorable Donald N. Silverman

Page 2

May 9, 1991

Today Mr. Lucia advised me by telephone that a hearing would be scheduled for June 26, 1991. I advised Mr. Lucia of my concern that the stipulation required the approval of the plan once it had been revised to meet the criteria set forth in the stipulation. He assured me that both he and the Town Engineer had advised the Planning Board last evening that the plan, as submitted, conformed to the stipulation.

My reading of the stipulation requires the respondent to approve the plan "At such time as the aforesaid changes have been made . . . submitted to and reviewed by the respondent so as to determine that the amended plan conforms in all respects to the requirements of this stipulation" These events have now taken place and approval is called for.

In accordance with the procedures of the Planning Board as regulated by the Zoning Ordinance, a public hearing is discretionary and in my humble view will only invite the request for changes to the plan which are not authorized or required under the stipulation. A conduct of a public hearing seven weeks hence and an approval thereafter is not an approval "at such time"

In my humble opinion, such a scheduled course of events is contrary to the terms of Your Honor's order and the stipulation freely entered into by the parties.

I respectfully request, in accordance with the last numbered paragraph of the stipulation, that Your Honor retake jurisdiction and request the parties to appear in your chambers to address my client's concerns.

Respectfully,



ALAN S. LIPMAN

ASL/bl
Enclosures

cc:
Daniel S. Lucia, Esquire
Temple Hill Road, RD#2,
New Windsor, New York 12550

Mrs. Sharon Belinsky
Windsor Counseling Group
194A Quassaick Avenue
New Windsor, New York 12550

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

May 15, 1991

Hon. Donald N. Silverman
County Court of the County of Westchester
Westchester County Courthouse
111 Grove Street
White Plains, New York 10601

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York
Supreme Court, Orange County
Index No. 3608-89

Dear Judge Silverman:

I am writing in response to the May 9, 1991 letter of Alan S. Lipman, Esq. to Your Honor in regard to the above matter.

I respectfully submit that the respondent Planning Board is not violating either the letter or the spirit of the Stipulation of Settlement and Discontinuance in this matter.

The respondent Planning Board is attempting to effect the settlement of this matter pursuant to said Stipulation, and pursuant to the applicable laws and procedures, so that this matter finally will be concluded and, hopefully, will not be subject to challenge by someone who may feel aggrieved by the Planning Board's action in approving the subject site plan.

I appeared before the Planning Board at their meeting on May 8, 1991 and, as the minutes ultimately will show, urged the Planning Board to take the preliminary steps required before granting final site plan approval to the petitioner's site plan.

These steps included the following:

(1) Adopting a motion to reverse two prior motions to hold a public hearing on this site plan on the grounds that a public

hearing has become superfluous. This litigation was commenced subsequent to the two prior motions and the parties have agreed upon a settlement of the litigation conditioned upon a number of mitigation measures to be taken by the applicant to protect the neighbors and the public. Thus further public input cannot effect a change in the terms of the stipulated settlement.

(2) The SEQRA process must be closed out. To date the Planning Board has taken lead agency status but has not taken any further action beyond that.

(3) The applicant must pay all required fees.

(4) The applicant's site plan must be referred to the Orange County Department of Planning and Development pursuant to General Municipal Law, Section 239-m.

After some discussion, it became apparent that the Planning Board members felt, given the two prior motions to hold a public hearing, that they owed it to the public to hold a public hearing on the site plan to advise them of the proposal, the litigation, and the mitigation measures required by the Stipulation. Thus, rather than reverse the two prior motions to hold a public hearing, the Planning Board resolved to hold a public hearing on the first available date (which later was determined to be June 26, 1991).

Although I had urged the Planning Board to reverse their two prior motions to hold a public hearing, I must respectfully defer to the reasoning of the Planning Board members who decided that they should proceed with the public hearing. This applicant has generated comment from the public at past meetings and the Planning Board felt that it owed the public the opportunity to air their views at a public hearing pursuant to its prior motions.

Surely Mr. Lipman does not want to obtain final site plan approval for his client only to have it undone by another Article 78 proceeding on the grounds that the Planning Board failed to follow required procedures. Hence taking the time to hold the public hearing, as well as taking the latter three steps above, before granting final site plan approval to the petitioner appears to be the most judicious course of action.

Although Mr. Lipman feels that the Planning Board has delayed granting final site plan approval pursuant to the Stipulation, in reality that delay is minimal. The Planning Board cannot vote on the site plan until receiving the recommendation of the Orange County Department of Planning and Development, or until the expiration of 30 days from the referral (which will not be until June 10, 1991), whichever first occurs. Thus holding the public hearing on June 26, 1991 does not materially delay approval of the site plan.

The respondent Planning Board fully intends to comply with its obligations under the Stipulation. The petitioner's site plan will be approved once all necessary steps are taken to insure that said approval is procedurally proper and complies with SEQRA.

If Your Honor feels that a conference will assist in resolving this matter, I will be happy to appear. However I feel that Mr. Lipman's complaint is premature and unwarranted. The respondent Planning Board should be afforded the opportunity to follow all necessary procedural steps before granting final site plan approval to the petitioner's site plan.

Respectfully,

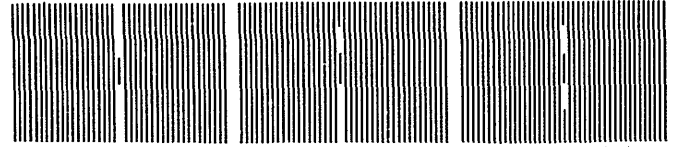
Daniel S. Lucia

DSL:rmd

cc: Mr. Carl Schiefer
Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Mark J. Edsall, P.E.
Alan S. Lipman, Esq.

HARVEY ALLEN BERG R.A., P.E.

• ARCHITECT • ENGINEER • PLANNER •



P.O. BOX 499 WASHINGTONVILLE N.Y. 10982
(914) 496-9125, 5303 FAX: (914) 496-1692

September 24, 1990

New Windsor Planning Board
Town Hall
555 Union Avenue
New Windsor, NY 12550

RE: WINDSOR COUNSELING GROUP
APPLICATION FOR SITE PLAN REVIEW & APPROVAL
TAX MAP NO: SECTION 19, BLOCK 4, LOT 58

Gentlemen:

We have been informed that the New Windsor Building Department is prepared to issue a building permit upon Planning Board site approval of the above referenced project, previously submitted to the Planning Board.

We would appreciate it if this action could be taken at the next meeting, scheduled for October 7, 1990

Sincerely,

HARVEY ALLEN BERG, R.A., P.E.
HAB/jal

cc: Sharon Belinsky/Windsor Counseling Group
Alan S. Lipman, Attorney

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

September 13, 1990

Andrew W. Bilinski, Esq.
Law Clerk
Chambers of Hon. Donald N. Silverman
County Court of the County of Westchester
Westchester County Courthouse
111 Grove Street
White Plains, New York 10601

Re: In re Windsor Counseling Group v.
The Planning Board of the Town of New Windsor,
New York
Supreme Court, Orange County
Index No. 3608-89

Dear Mr. Bilinski:

Thank you for your letter of September 5, 1990. I apologize for not writing to you sooner to advise on the status of the above proceeding.

Please be advised that Alan S. Lipman, Esq. and I have discussed, and agreed upon, the terms of settlement of the above proceeding. We have agreed upon the changes in the site plan and we have agreed upon the terms of a Stipulation of settlement, all of which is agreeable to our respective clients.

The Petitioner has not yet submitted the revised site plan to the Respondent, and has not yet signed the Stipulation, since the Petitioner elected to seek an opinion from the Town Building Inspector upon the plans in order to determine that the same comply with all applicable codes, before pursuing the matter with the Respondent.

I have spoken with the Building Inspector and he advises me that he is in the process of reviewing the plans and will reply to the Petitioner. Once this is done, I presume that the Petitioner will submit the revised site plan and Stipulation to the Respondent.

Very truly yours,

Daniel S. Lucia

DSL:rmd

cc: Mr. Carl Schiefer
Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Mr. Michael Babcock
Alan S. Lipman, Esq.

DANIEL S. LUCIA
ATTORNEY-AT-LAW
343 TEMPLE HILL ROAD
NEW WINDSOR, NEW YORK 12553

TELEPHONE
(914) 561-7700

June 1, 1990

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor

Dear Mr. Schiefer:

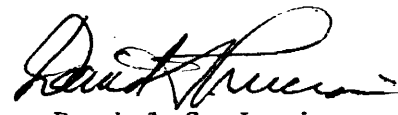
I enclose herewith a reduced photocopy of the Site
Plan for Windsor Counseling Group, Revision 5, dated May 14, 1990.

This incorporates all of the amendments to the site
plan required by the terms of the Stipulation of Settlement and
Discontinuance which Mr. Lipman and I have agreed to upon behalf
of our respective clients.

Mr. Lipman advised me that the applicant's architect
is in the process of preparing the plans for the changes in the
building to bring the conversion up to the requirements of the
code. He expects that these plans should be submitted to Mike
Babcock within the next few weeks.

If you or any members of the Board have any questions
or comments, please do not hesitate to contact me.

Very truly yours,


Daniel S. Lucia

DSL:rm
Enclosure

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Mr. Michael Babcock

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

February 15, 1990

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Mr. Schiefer:

Following my last meeting with the Planning Board members, I received a second Order from Hon. Donald N. Silverman, J.S.C., dated January 8, 1990. A copy thereof is enclosed. This second Order creates the same result as Justice Silverman's earlier October 6, 1989 Decision/Order, i.e. my motion to dismiss the petition as a matter of law was denied. I am not certain just why Justice Silverman on his own initiative entered a second Order with the same result other than he may have wanted to further document his decision since the first Decision/Order was already on appeal.

The entry of this second Order works to the Planning Board's advantage since it enables us to gain some additional time within which to consummate a settlement of this proceeding. I have just filed a Notice of Appeal of this second Order, copy enclosed, which will give us an additional three months to wrap up the settlement.

As you may recall Alan S. Lipman, Esq. and I have reached an agreement upon the terms of settling this proceeding. Naturally I wanted to finalize this settlement before the expiration of my time to perfect the appeal from the first Decision/Order expired on February 22, 1990 since I did not want to give up the tactical advantage of the appeal. Although the proceeding has been settled in principle, the mechanics of accomplishing that settlement were consuming much of the time to perfect the appeal from the first Decision/Order.

February 15, 1990

Now that Justice Silverman has entered his second Order, and an appeal therefrom has been filed, we have gained an additional three months to effect the settlement. I am waiting for Mr. Lipman to send me his proposed stipulation of settlement. I have advised him that if we do not have the settlement wrapped up by mid-March, I will proceed to perfect the appeal from the second Order.

Mr. Lipman recently called me to advise that his client was upset by the number, and the expense, of the upgrades which were required for the building to meet code requirements upon the conversion from single family use to office use. I discussed this with Mike Babcock who advises me that he is only requiring what is mandated by the code. Mike advises me that there is no question of interpretation or of unequal treatment, as Mr. Lipman always alleges. Thus Mike is simply doing his job.

Consequently, I have taken the position with Mr. Lipman, and he agrees, that upgrades required to meet code requirements are completely outside the scope of the present settlement of this proceeding. The terms of the settlement which I originally proposed, and which have never changed, are that the Planning Board will grant site plan approval to the petitioner upon certain specific conditions being met by the petitioner. We have never offered to grant a Certificate of Occupancy to the petitioner. The issuance of a C of O is solely within Mike's jurisdiction. It is outside the scope of the Planning Board's function and outside the scope of the settlement of this proceeding.

Hence, I want to proceed with the settlement of this proceeding upon the previously agreed terms. The petitioner will have to meet the code requirements and deal with Mike to get his C of O.

If the Board desires to discuss any of these matters in greater detail, I will be happy to meet with the Board at your convenience.

Very truly yours,


Daniel S. Lucia

DSL:rmf

Enclosures

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Andrew S. Krieger, Esq.
Mr. Michael Babcock

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

November 21, 1989

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

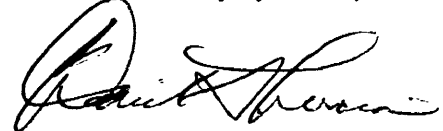
Dear Mr. Schiefer:

I am filing a Notice of Appeal of Justice Silverman's October 6, 1989 Decision/Order. I am taking this step to protect the Planning Board's interests in this matter since I have not received any decision from Alan S. Lipman regarding settlement.

Joseph P. Rones, Esq. suggested at our October 17, 1989 conference that I should file a Notice of Appeal in the event that a settlement had not been achieved before the time to appeal expired. Joe's advice was sound and I am following it.

I will advise you when I receive some decision on settlement from Mr. Lipman.

Very truly yours,



Daniel S. Lucia

DSL:rmd
Enclosures

Rec'd 11/23/89

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

November 21, 1989

Alan S. Lipman, Esq.
Fabricant & Lipman
One Harriman Square
P. O. Box 60
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor

Dear Alan:

I enclose herewith for service upon you a Notice of Appeal and Civil Appeal Pre-Argument Statement regarding Justice Silverman's October 6, 1989 Decision/Order.

The Planning Board would like to achieve a settlement of this matter as outlined in my November 9, 1989 letter to you. My client asked me to file the enclosed Notice of Appeal so that its time to appeal did not expire while your client is considering settlement.

If your client decides to settle on the terms we discussed, I will not perfect the appeal. Once you receive your client's advice on settlement, please let me know its position.

Thanks for your cooperation in this matter.

Very truly yours,

Daniel S. Lucia

DSL:rm
Enclosures

cc: Mr. Carl Schiefer

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

November 3, 1989

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550


Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Mr. Schiefer:

I enclose herewith a copy of a letter I received yesterday from Alan S. Lipman, Esq. This represents the response by Windsor Counseling Group to the compromise settlement proposal I made to Mr. Lipman following my October 25, 1989 meeting with the Planning Board.

If convenient for the Board, I will meet with you, in executive session, either before or after your November 8, 1989 meeting, in order to discuss this further.

Very truly yours,


Daniel S. Lucia

DSL:rmd
Enclosure

cc: Hon. George A. Green
J. Tad Seaman, Esq.
Joseph P. Rones, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of

WINDSOR COUNSELING GROUP,

Petitioner,

-against-

THE PLANNING BOARD OF THE TOWN OF
NEW WINDSOR, NEW YORK,

Respondent,

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules,
Reversing a Certain Decision Adopted by
Respondent on April 26, 1989.

DECISION/ORDER

Index No.
3608/89

-----X
SILVERMAN, J.

The instant petition is an Article 78 special proceeding in the nature of mandamus to review. It challenges the decision of Respondent Planning Board of April 26, 1989. That decision denied Petitioner's application for site plan approval based on considerations of inadequate lot width, the belief that the property was being used for residential purposes and inadequacy of the existing road.

The property in question is designated on the Tax Map of the Town of New Windsor as Section 19, Block 4, Lot 58. It is also known as 194A Quassaick Avenue. The property was purchased by the Petitioner in 1985. It is improved with a one story building. Quassaick Avenue is a private unpaved road.

Respondent has submitted a motion to dismiss, and

Petitioner thereafter filed an affidavit in opposition. Respondent submitted a further reply affidavit on July 28, 1989. The Court notes four subsequent sur-reply's by Petitioner and three sur-reply's by Respondent and takes this opportunity to remind both counsel of the significance of §§ 3011 and 3012 of the CPLR.

In this particular instance Petitioner had applied for a site plan approval by the Planning Board. That site plan approval was denied for reasons alluded to above. Petitioner asserts the denial to be arbitrary and capricious and an abuse of discretion. These allegations are based on the arguments: (1) that the property is located in a "neighborhood commercial" zone which permits commercial use as of right; and (2) the approval by the Planning Board of two highly similar applications in the near and general vicinity of the property in question.

Respondent's motion to dismiss raises arguments of: (1) Petitioner seeking to review a non-final determination; (2) Petitioner failing to exhaust administrative remedies (failure to appeal to ZBA); and (3) Petitioner's application lacks good faith in its objective.

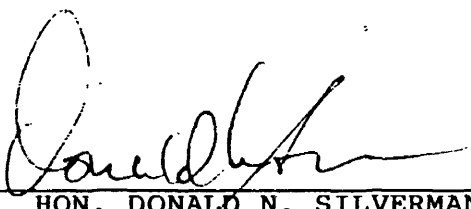
It is clear from § 274-A that in matters concerning approval of site plans the Planning Board is the final arbiter at the administrative level and that appeal may be taken, by Article 78 proceeding, directly.

Town Law § 274-A(3) provides that "any person aggrieved by any decision of the Planning Board ... may apply to the Supreme Court for review by proceeding under Article 78 of the Civil Practice Law and Rules."

Accordingly the instant motion to dismiss is denied. Respondent is directed to submit their answer within fourteen (14) days of this Decision and Order.

So Ordered.

Dated: White Plains, New York
October 6, 1989



HON. DONALD N. SILVERMAN
ACTING SUPREME COURT JUSTICE

FABRICANT & LIPMAN
Attn: Alan S. Lipman, Esq.
One Harriman Square
Goshen, New York 10924

DANIEL S. LUCIA, ESQ.
Temple Hill Road
RD #2
New Windsor, New York 12550

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

October 6, 1989

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

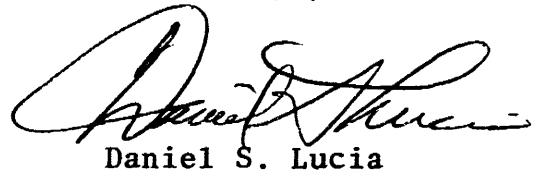
Dear Mr. Schiefer:

I was advised earlier this week that the above entitled proceeding has been transferred from Hon. Peter C. Patsalos to Hon. Donald N. Silverman of the Westchester County Court.

The petitioner's attorney, Alan S. Lipman, Esq., has submitted an unprecedented fourth sur-reply affidavit, a copy of which is enclosed. I also enclose my respondent's fourth sur-reply affidavit in response thereto.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Daniel S. Lucia

DSL:rmd
Enclosures

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

October 6, 1989

Alan S. Lipman, Esq.
Fabricant & Lipman
One Harriman Square
P. O. Box 60
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York

Dear Alan:

I enclose herewith Respondent's Fourth Sur-Reply Affidavit in connection with a motion to dismiss the petition in the above entitled proceeding.

As I believe you are aware, this matter has been transferred to Hon. Donald N. Silverman of the Westchester County Court.

When I spoke with Justice Silverman's law secretary, Andrew Bilinski, he indicated an understandable surprise at the number of sur-reply affidavits this motion has generated. You might want to check with him before submitting any additional sur-reply affidavits.

Very truly yours,

Daniel S. Lucia

DSL:rm
Enclosure

cc: Mr. Carl Schiefer

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

September 8, 1989

Mr. Thomas W. Adams
Chief Court Clerk
Supreme Court, Orange County
Government Center
255-275 Main Street
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York
Supreme Court, Orange County
Index No. 3608-89
IAS Justice: Hon. Peter C. Patsalos, J.S.C.
Return Date: July 31, 1989

Dear Mr. Adams:

I enclose herewith Respondent's Third Sur-Reply Affidavit in connection with a motion to dismiss the petition in the above entitled proceeding, which was returnable before Justice Peter C. Patsalos on July 31, 1989.

Please submit the enclosure to Justice Patsalos on my behalf.

Thank you for your assistance in this matter.

Very truly yours,

Daniel S. Lucia

DSL:rm
Enclosure

cc: Mr. Carl Schiefer
Alan S. Lipman, Esq.

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

July 28, 1989

Mr. Thomas W. Adams
Chief Court Clerk
Supreme Court, Orange County
Government Center
255-275 Main Street
Goshen, New York 10924

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor, New York
Supreme Court, Orange County
Index No. 3608-89
IAS Justice: Hon. Peter C. Patsalos, J.S.C.
Return Date: July 31, 1989

Dear Mr. Adams:

I enclose herewith a Reply Affidavit in connection with a motion to dismiss the petition in the above entitled proceeding.

Please submit this on my behalf to Justice Peter C. Patsalos on the return date, July 31, 1989.

Thank you for your assistance in this matter.

Very truly yours,

Daniel S. Lucia

DSL:rm
Enclosure

cc: Mr. Carl Schiefer
Alan S. Lipman, Esq.

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R.D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

July 17, 1989

Mr. Carl Schiefer
Chairman
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550

Re: In re Windsor Counseling Group
v. The Planning Board of the
Town of New Windsor

Dear Mr. Schiefer:

I am writing to advise that my motion to dismiss the petition in the above entitled proceeding has been adjourned for two weeks, from July 17, 1989 to July 31, 1989. The attorney for the petitioner, Alan S. Lipman, Esq., requested an adjournment since an associate in his office was unable to prepare answering papers due to a death in his family. Given these circumstances, I naturally consented to his request for an adjournment.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Daniel S. Lucia

DSL:rmc

DANIEL S. LUCIA
ATTORNEY-AT-LAW
TEMPLE HILL ROAD
R. D. #2
NEW WINDSOR, NEW YORK 12550

TELEPHONE
(914) 561-7700

June 30, 1989

Mrs. Frances Sullivan
Stenographer
Planning Board
Town of New Windsor
555 Union Avenue
New Windsor, New York 12550

Re: In re Windsor Counseling Group
v. The Planning Board of the Town
of New Windsor

Dear Fran:

In connection with the defense of the above entitled Article 78 proceeding, it is necessary for me to submit to the Court a certified transcript of the record of the proceedings before the Planning Board in regard to the Windsor Counseling application.

The petition indicates that there were proceedings or discussions before the Planning Board on the following dates:

November 11, 1987
May 25, 1988
June 8, 1988
January 25, 1989
March 8, 1989
April 26, 1989.

Please supply me with a certified original, and three copies, of the transcript of the record on each of these dates for any Windsor Counseling proceedings or discussions.

In addition, if you find that there were any proceedings or discussions regarding Windsor Counseling on any other dates, please provide me with a certified transcript for those dates also.

Mrs. Frances Sullivan

Page Two

June 30, 1989

Thanks for your cooperation in this matter. I will need these transcripts by Friday, July 7, 1989.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Daniel S. Lucia

DSL:rmc

cc: Mr. Carl Schiefer
Chairman
Planning Board

OFFICE OF THE PLANNING BOARD
TOWN OF NEW WINDSOR
ORANGE COUNTY, N.Y.

NOTICE OF DISAPPROVAL OF SITE PLAN OR SUBDIVISION APPLICATION

P-B
File No. B7-53

Date 16 MAY 1989

To: WINDSOR COUNSELING GROUP
196 QUASSACK AVE
NEW WINDSOR N.Y. 12550

PLEASE TAKE NOTICE that your application dated 15 JULY 1989
for (~~Subdivision~~ - Site Plan)

located at OFF QUASSACK AVE - RT 94
(PLAN LAST REVISION #4 DATED FEB 10, 1989)

is returned herewith and disapproved for the following reasons.

VARIANCE REQUIRED FOR INSUFFICIENT LOT WIDTH


Planning Board Chairman
CARL SCHEIPER

NC- A-9

Requirements

Min. Lot Area 10 DDD SF
Min. Lot Width 100 FT
Req'd Front Yd. 40 FT
Req'd. Side Yd. 15-35 FT
Req'd. Rear Yd. 15 FT
Req'd. Street
Frontage* N-A
Max. Bldg. Hgt. 35 FT
Min. Floor Area* N-A
Dev. Coverage* N-A %
Floor Area Ratio** 1

Proposed or
Available

19116 SF
85 FT
48 FT
16-35 FT
106 FT

Variance
Request

—
15 FT
—
—
—

* Residential Districts only

** Non-residential Districts only

***** NO VALUE INDICATED ON PLAN
NOR ANY VARIANCE REQUESTED**

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT (914-565-8550)
TO MAKE AN APPOINTMENT WITH THE ZONING BOARD OF APPEALS

CC ZBA
MJE
Zimmerman Eng.



OFFICE OF THE PLANNING BOARD

TOWN OF NEW WINDSOR

555 Union Avenue
New Windsor, New York 12550
(914) 565-8808

April 27, 1989

NN21975

Alan S. Lipman, Esq.
Fabricant & Lipman
One Harriman Square
P.O. Box 60
Goshen, New York 10924

RE: Windsor Counseling Group w.
Town of New Windsor

Dear Alan:

I reviewed the minutes of the March 8th meeting, your April 10th letter and my March 10th letter with the Planning Board at their April 26th meeting.

They confirmed my understanding of their action as reflected in my March 10th letter. The minutes of the March 8th meeting were not as complete as they might have been. At the April 26th meeting the Board reconfirmed their denial. The denial was based upon the inadequate lot width, the alternation of parking facilities without site plan approval and what appears to be a mixed use of office and residential use without approvals. Generally, the intensity of use is considered to be overburdening the lot and its environs. It does not appear possible to accommodate all the cars that need to be parked. As to the lot width issue, the applicant is referred to the ZBA for a variance or interpretation.

When zoning questions prevent approval, as here, the site plan application denial is deemed without prejudice to renewal upon resolution of the zoning issues. When the applicant returns to the Planning Board, the other issues raised should be addressed or resolved.

You will, of course, be provided with a copy of the minutes of last night's meeting when they are prepared. In advance of the minutes, however, I wanted to respond to your April 10, 1989 letter.

Very truly yours,

BY:


JOSEPH P. RONES
Planning Board Attorney

JPR:mb

cc: Carl Scheifer



OFFICE OF THE PLANNING BOARD

TOWN OF NEW WINDSOR

555 Union Avenue
New Windsor, New York 12550
(914) 565-8808

March 10, 1989

NN21975

Alan Lipman, Esq.
One Harriman Square
Goshen, New York 10924

RE: Windsor Counselling Group
Site Plan
Planning Board file 87-53

Dear Mr. Lipman:

I've been advised by the attorney for the Zoning Board that a lot width variance is required due to the change from the pre-existing residential use to an office use.

Accordingly, the Planning Board at its meeting of March 8, 1989 voted to deny the application for site plan approval, without prejudice to renewal, pending ZBA action on a lot width variance application.

You are, therefore, respectfully advised to make the appropriate application to the Zoning Board of Appeals.

Very truly yours,

FINKELSTEIN, LEVINE,
GITTELSON AND TETENBAUM

BY:


JOSEPH P. RONES

JPR:mb

cc: Daniel Lucia, Esq., ZBA, Attorney
Carl Scheifer, P.B. Chairman ✓

87-53

Mr. VanLeeuwen: I make a motion to refer the Windsor Counseling Group Site Plan back to the Zoning Board of Appeals because there is not enough lot width. This is following a review of a memorandum from the Zoning Board of Appeals Attorney to the Planning Board Attorney dated 3 March, 1989.

Mr. McCarville: I will second that motion.

ROLL CALL:

Mr. McCarville	Aye
Mr. VanLeeuwen	Aye
Mr. Pagano	Aye
Mr. Soukup	Aye
Mr. Jones	Aye
Mr. Lander	Aye
Mr. Schiefer	Aye

ZIMMERMAN
ENGINEERING & SURVEYING, P.C.

Route 17M

Harriman, N.Y. 10926

(914) 782-7976

GERALD ZIMMERMAN P.E., L.S.

February 13, 1989

Planning Board Chairman and Board Members
Town of New Windsor Planning Board
555 Union Avenue
New Windsor, New York 12550

Re: Windsor Counseling Group
Site Plan
Job No. 85-196

Dear Planning Board Members:

In response to technical comments by Mr. Edsall, P.E. dated 25 January 1989,
we submit the following.

Item 1. No response.

Item 2. No response.

Item 3.a) We disagree with this statement. The plan clearly indicates a
one car garage and that is the intended purpose. We should, therefore,
not require additional parking for this area but be permitted to use
this for the required parking as was shown on previous site plans.
Further, we are providing twelve (12) parking spaces.

b) The parking area shall be paved.

c) We shall make the rear access drive 15' minimum.

d) We believe the walkway to be totally unnecessary since this parking will
be used primarily for employee parking.

e) The property is presently screened on all sides.

- f) The fire inspector's office has approved the site plan as reported to us at past meetings.
- Item 4. A variance is not required as per the zoning regulations.
- Item 5. All dimensions are the result of an actual field survey and are true and accurate.
- Item 6. There is no maintenance agreement.
- Item 7. This site lighting has been used and deemed adequate for the past three years and is in our opinion satisfactory.
- Item 8. The site drains in a southerly direction and therefore does not effect any residential lots. For a 25 year storm the runoff from the rear parking area calculates to be, $C=.9$, $i=2.28$ in./hr., $A=.08$ Ac., $Q=CiA = (.9)(2.28)(.08) = 0.16$ cfs. Totally insignificant.
- Item 9. No response.
- Item 10. Planning Board designated lead agency at 1/25/89 meeting.

Very truly yours,


Gerald Zimmerman, P.E., L.S.

GZ/j1

cc: Mr. Alan Lipman
Windsor Counseling Group

LAW OFFICES
FABRICANT & LIPMAN
ONE HARRIMAN SQUARE
POST OFFICE BOX 60
GOSHEN, NEW YORK 10924

HERBERT J. FABRICANT (1915-1987)
ALAN S. LIPMAN

~~XXXXXXXXXXXX~~

914-294-7944
FAX (914) 294-7889

November 21, 1988

Henry Schieble, Chairman
Town of New Windsor Planning Board
555 Union Avenue
New Windsor, New York 12550

Re: Windsor Counseling Group

Dear Mr. Schieble:

With reference to the captioned application for site plan approval, our revised plans were submitted to your Board on or about August 16, 1988.

Since that time, we have attempted to secure a position on the agenda of your meetings conducted subsequent to that date, without success.

A delay of those proportions is not acceptable to me. Please see to it that this matter is placed on the December agenda of your Board and if that is not possible, I would like an explanation as to why it is not possible.

Very truly yours,



ALAN S. LIPMAN

ASL:ma.

cc: Zimmerman Engineering
Windsor Counseling Group

Planning Board
Town of New Windsor
555 ~~Union Avenue~~
New Windsor, New York 12550
~~OFFICE FARM ROAD~~

(This is a two-sided form)

Date Received _____
Meeting Date _____
Public Hearing _____
Action Date _____
Fees Paid _____

APPLICATION FOR SITE PLAN, LOT-LINE CHANGE
OR SUBDIVISION PLAN APPROVAL

1. Name of Project Site Plan for Windsor Counseling Group
2. Name of Applicant Windsor Counseling Group Phone 565-6888
Address 196 Quassaick Avenue, New Windsor, New York 12550
(Street No. & Name) (Post Office) (State) (Zip)
3. Owner of Record Windsor Counseling Group Phone 565-6888
Address 196 Quassaick Avenue, New Windsor, New York 12550
(Street No. & Name) (Post Office) (State) (Zip)
4. Person Preparing Plan Gerald Zimmerman Phone 782-7976
Address Route 17M, Harriman, New York 10926
(Street No. & Name) (Post Office) (State) (Zip)
5. Attorney Mr. Alan Lipman Phone 294-7944
Address 1 Harriman Square, Goshen, New York 10924
(Street No. & Name) (Post Office) (State) (Zip)
6. Location: On the west side of Route 94
400 feet north (Street)
(Direction)
of Union Avenue (County Highway No. 69)
(Street)
7. Acreage of Parcel .44± acres 8. Zoning District NC
9. Tax Map Designation: Section 19 Block 4 Lot 58
10. This application is for Site Plan Approval
11. Has the Zoning Board of Appeals granted any variance or a special permit concerning this property? No

If so, list Case No. and Name _____

12. List all contiguous holdings in the same ownership
Section _____ Block _____ Lot(s) _____

Attached hereto is an affidavit of ownership indicating the dates the respective holdings of land were acquired, together with the liber and page of each conveyance into the present owner as recorded in the Orange County Clerk's Office. This affidavit shall indicate the legal owner of the property, the contract owner of the property and the date the contract of sale was executed.

IN THE EVENT OF CORPORATE OWNERSHIP: A list of all directors, officers and stockholders of each corporation owning more than five percent (5%) of any class of stock must be attached.

OWNER'S ENDORSEMENT
(Completion required ONLY if applicable)

COUNTY OF ORANGE

SS.:

STATE OF NEW YORK

_____ being duly sworn, deposes and says
that he resides at _____
in the County of _____ and State of _____
and that he is (the owner in fee) of _____
(Official Title)
of the Corporation which is the Owner in fee of the premises
described in the foregoing application and that he has authorized
_____ to make the foregoing
application for Special Use Approval as described herein.

I HEREBY DEPOSE AND SAY THAT ALL THE ABOVE STATEMENTS AND INFORMATION, AND ALL STATEMENTS AND INFORMATION CONTAINED IN THE SUPPORTING DOCUMENTS AND DRAWINGS ATTACHED HERETO ARE TRUE.

Sworn before me this

15th day of July 1988

Windsor Carmelby Long
(Owner's Signature)

Windsor Carmelby Long
(Applicant's Signature)

James Lynn Post (Johnson)
(Title)
Agent for Applicant

James Lynn Post (Johnson)
Notary Public
THOMAS LYNN POST
Notary Public, State of New York
No. 4881088
Qualified in Orange County
Commission Expires 8/31/89

REV. 3-87

PROXY STATEMENT

for submittal to the

TOWN OF NEW WINDSOR PLANNING BOARD

ELAINE ZIMMERMAN, deposes and says that ^she
resides at 17 BRIARWOOD AVE., MONROE, N.Y.
(Owner's Address)

in the County of ORANGE
and State of NEW YORK

and that ^she is the owner in fee of THE WINDSOR COUNSELING GROUP

which is the premises described in the foregoing application and
that ^she has authorized ZIMMERMAN ENGINEERING & GERALD ZIMMERMAN
to make the foregoing application as described therein.

Date:

6/6/88

Elaine Zimmerman
(Owner's Signature)

Joseph J. Costa
(Witness Signature)

87-53

INTER-OFFICE CORRESPONDENCE

TO: Town Planning Board

FROM: Town Fire Inspector

DATE: 24 August 1988

SUBJECT: Windsor Consulting Group

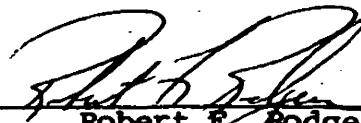
Planning Board Reference Number: Not supplied

Fire Prevention Reference Number: 88-73

A review of the above referenced subject site plan/subdivision was conducted on 24 August 19 88, with the following being noted.

- 1) The 12 foot driveway to be increased to the maximum width possible

This site plan/subdivision is found unacceptable.



Robert F. Rodgers; CCA
Fire Inspector

INTER-OFFICE CORRESPONDENCE

TO: New Windsor Planning Board
FROM: Town Fire Inspector
DATE: 6 May 1988
SUBJECT: Windsor Counseling Group
PB-87-53 FB-88-26

A review of the above site plan which was received on 5 May 1988, was conducted this date.

The site plan submitted was prepared by Zimmerman Engineering and Surveying, P.C., revision date of 13 April 1988.

This site plan as I understand it, has been submitted in order to locate parking spaces 6 and 7 and to relocate parking spaces 1 through 5, so that they are no longer in the right-of-way. I find this site plan to be acceptable.

I would like to comment that this gravel road is in disrepair and steps should be taken by ALL interested parties to repair same.


Robert F. Rodgers; CCA
Fire Inspector

TOWN OF NEW WINDSOR PLANNING BOARD

TRACKING SHEET

PROJECT NAME:

Windsor Counseling Group

PROJECT NO. :

87-53

TYPE OF PROJECT:

Subdivision

Site Plan ☒

Lot Line Change

Other (Describe)

TOWN DEPARTMENT REVIEWS:

Date

Date

Not

App'd

Not App'd

Required

Planning Board Engineer

Highway

Bus. Fire Prev.

Sewer

Water

Flood

5-25-88 7-21-88
5-6-88 7-12-88

OUTSIDE DEPT./AGENCY REVIEWS:

DOT-See Comments-5/11/88

DEC

O/C PLANNING

O/C HEALTH

NYSDOH

OTHER (SPECIFY)

5-12-88 See Comments

SEQR:

Lead Agency Action

Determination

EAF Short ☒ Not signed Long

Submitted Accepted

Proxy: Filed ☒ No

Representative

PUBLIC HEARING:

Held (DATE)

Waived*

Other

(* Minor Subdivision and Site Plans only.)

TIME SEQUENCING:

(SUBDIVISIONS)

Sketch Plan Date

+ 30 days = Action Date

Preliminary P/H Date

+ 45 days = Action Date

Preliminary App'l Date

+ 6 months = Final Resub. Date

Final Plan Date

+ 45 days = Final App'l Date

TIME SEQUENCING:

(SITE PLANS)

Presubmission Conf. Date

+ 6 months = Submittal Date

First Meeting Date

+ 90 days = Final App'l Date

**RETAKE
OF
PREVIOUS
DOCUMENT**

TOWN OF NEW WINDSOR PLANNING BOARD
TRACKING SHEET

PROJECT NAME: Windsor Counseling Group

PROJECT NO.: 87-53

TYPE OF PROJECT: Subdivision _____ Site Plan ☒ _____
Lot Line Change _____ Other (Describe) _____

<u>TOWN DEPARTMENT REVIEWS:</u>	<u>Date</u> <u>App'd</u>	<u>Date</u> <u>Not App'd</u>	<u>Not</u> <u>Required</u>
Planning Board Engineer	_____	_____	_____
Highway	_____	_____	_____
Bu. Fire Prev.	_____	_____	_____
Sewer	_____	_____	_____
Water	_____	_____	_____
Flood	_____	_____	_____

OUTSIDE DEPT./AGENCY REVIEWS:

DOT-See Comments	<u>5/11/88</u>	_____
DEC	_____	_____
O/C PLANNING	<u>5-12-88 See Comments</u>	_____
O/C HEALTH	_____	_____
NYSDOH	_____	_____
OTHER (SPECIFY)	_____	_____

SEQR: Lead Agency Action _____
Determination _____
EAF Short ☒ Not signed Long _____ Submitted _____ Accepted _____
Proxy: Filed NO Representative _____

PUBLIC HEARING: Held (DATE) _____ Waived* _____
Other _____
(* Minor Subdivision and Site Plans only.)

TIME SEQUENCING:
(SUBDIVISIONS)

Sketch Plan Date	_____	+ 30 days = Action Date	_____
Preliminary P/H Date	_____	+ 45 days = Action Date	_____
Preliminary App'l Date	_____	+ 6 months = Final Resub. Date	_____
Final Plan Date	_____	+ 45 days = Final App'l Date	_____

TIME SEQUENCING:
(SITE PLANS)

Presubmission Conf. Date	_____	+ 6 months = Submittal Date	_____
First Meeting Date	_____	+ 90 days = Final App'l Date	_____

INTER-OFFICE CORRESPONDENCE

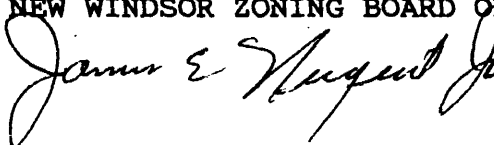
TO: MEMBERS - TOWN PLANNING BOARD
FROM: ZONING BOARD OF APPEALS
SUBJECT: WINDSOR COUNSELING GROUP
DATE: June 14, 1988

It has come to our attention that WINDSOR COUNSELING GROUP is presently before the Planning Board (File #87-53) for site plan approval.

Kindly be advised that the Zoning Board of Appeals has filed an appeal stemming from an Article 78 proceeding which was filed by WINDSOR COUNSELING GROUP and this is now pending in the New York State Appellate Division. We expect to be receiving a decision within the next two weeks on this matter.

Would you kindly hold off on site plan approval pending a decision from the Appellate Division.

James Nugent, Chairman
NEW WINDSOR ZONING BOARD OF APPEALS



/PAB



McGOEY and HAUSER
CONSULTING ENGINEERS P.C.

45 QUASSAICK AVE. (ROUTE 9W)
NEW WINDSOR, NEW YORK 12550

TELEPHONE (914) 562-8640
PORT JERVIS (914) 856-5600

RICHARD D. McGOEY, P.E.
WILLIAM J. HAUSER, P.E.
MARK J. EDSALL, P.E.
Associate

Licensed in New York,
New Jersey and Pennsylvania

TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: WINDSOR COUNSELLING GROUP
PROJECT LOCATION: OFF ROUTE 94 (NEAR DORAL DRIVE)
PROJECT NUMBER: 87-53
DATE: 25 MAY 1988

1. The Applicant has submitted a site plan for review for a business and professional office use of an existing one-story building. The plan was previously reviewed at the 18 November 1987 Planning Board Meeting.
2. The Board may wish to verify that the subject property is located within the NC Zone. If so, the site plan complies with all minimum requirements of the Bulk Table, with the exception of the provided lot width.
3. The issue of legal access by right-of-way to the subject property should be demonstrated to the satisfaction of the Planning Board Attorney.
4. The number of required parking spaces for the site is a total of eight (8) spaces. The plan indicates a total of nine (9) spaces are provided; however, I can only see seven (7) on the plan. Therefore, an additional space is required for compliance with the Town Code.
5. The handicapped space shown on the plan is not of sufficient size.
6. The sign detail does not indicate the manner in which the sign is mounted on the property.
7. The light detail does not give information with regard to the height of the unit and lighting area. It should be verified that the lighting curve of the unit does not result in a nuisance to adjoining residential lots.
8. The Planning Board Chairman should verify that a Proxy Statement has been filed regarding this project.
9. The Board may wish to take action to assume the position of Lead Agency under the SEQRA review process.


TOWN OF NEW WINDSOR
PLANNING BOARD
REVIEW COMMENTS

PROJECT NAME: WINDSOR COUNSELLING GROUP
PROJECT LOCATION: OFF ROUTE 94 (NEAR DORAL DRIVE)
PROJECT NUMBER: 87-53
DATE: 25 MAY 1988

-2-

10. The Planning Board should determine if a Public Hearing will be necessary for this site plan per discretionary judgment under Paragraph 48-19.C of the Town Zoning Ordinance.

Respectfully submitted,


Mark J. Edsall, P.E.
Planning Board Engineer

MJE.emj

windsoremj



Louis Heimbech
County Executive

**Department of Planning
& Development**

124 Main Street
Goshen, New York 10924
(914) 294-5151

Peter Garrison, Commissioner
Richard S. DeTurk, Deputy Commissioner

**ORANGE COUNTY DEPARTMENT OF PLANNING & DEVELOPMENT
239 L, M or N Report**

This proposed action is being reviewed as an aid in coordinating such action between and among governmental agencies by bringing pertinent inter-community and Countywide considerations to the attention of the municipal agency having jurisdiction.

Referred by T. NEW WINDSOR PLANNING BOARD D P & D Reference No. NWT 22-8811
County I.D. No. 19 1 4 158

Applicant WINDSOR COUNSELING GROUP

Proposed Action: SITE PLAN: PROFESSIONAL OFFICES

State, County, Inter-Municipal Basis for 239 Review WITHIN 500' OF NY 594

County Effects: _____

IMPACT ON ADJOINING USES/PROPERTIES
SHOULD BE CAREFULLY EVALUATED ON BASIS OF
HOW APPLICANT INTENDS TO USE THE SITE

Related Reviews and Permits N.Y.S. DEPT. OF TRANSPORTATION

County Action: ☒ Local Determination _____ Approved _____ Disapproved _____

Approved subject to the following modifications and/or conditions: _____

MAY 12, 1988
Date

Peter Garrison
Commissioner

☐ Postcard Returned
Date _____

5-5-88

Windsor Counseling 87-53

BUILDING INSPECTOR, P.B. ENGINEER, FIRE INSPECTOR, D.O.T. O.C.H. O.C.P.
WATER, ~~SEWER~~, HIGHWAY REVIEW FORM: D. P. W.

The maps and plans for the Site Approval ✓
Subdivision _____ as submitted by
Gerald Zimmerman, PE for the building or subdivision of
Windsor Counseling Group has been
reviewed by me and is approved ✓
disapproved _____.

If disapproved, please list reason.

HIGHWAY SUPERINTENDENT

WATER SUPERINTENDENT

[Signature]
SANITARY SUPERINTENDENT

May 25 1988
DATE

5-5-88

Windsor Counseling

ECTD. R4

87-53

MAY 05 1988

BUILDING INSPECTOR, P.B. ENGINEER, FIRE INSPECTOR, ~~REVIEWER~~ T. O.C.H. O.C.P.
WATER, SEWER, HIGHWAY REVIEW FORM: D. P. W.

The maps and plans for the Site Approval _____
Subdivision _____ as submitted by _____
_____ for the building or subdivision of _____
_____ has been
reviewed by me and is approved _____
disapproved _____.

If disapproved, please list reason.

what do you want?

No Comment As Presented.
Is Gravel Road to be Paved? IF SO
Highway work Permit Required.

Don Greene
HIGHWAY SUPERINTENDENT
W-5 DOT

WATER SUPERINTENDENT

SANITARY SUPERINTENDENT

5/11/88
DATE

5-5-88

Windsor Counseling 87-53

BUILDING INSPECTOR, P.B. ENGINEER, FIRE INSPECTOR, D.O.T. O.C.H. O.C.P.
WATER, SEWER, HIGHWAY REVIEW FORM: D. P. W.

The maps and plans for the Site Approval _____
Subdivision _____ as submitted by
Zimmerman Eng. for the building or subdivision of
Windsor Counseling Group has been
reviewed by me and is approved ✓
disapproved _____.

~~If disapproved, please list reason.~~

will not interfere with water system

HIGHWAY SUPERINTENDENT

WATER SUPERINTENDENT

SANITARY SUPERINTENDENT

DATE

July 8, 1992

80

WINDSOR COUNSELING GROUP SITE PLAN:

Sharon Belinski and Neil Belinski came before the Board representing this proposal.

BY MR. BABCOCK: The file will not be there. I didn't realize that you would want the file. It's that file has been filed in the Town Clerk's office, that's not an open file any more.

BY MS. BELINSKI: Let me start off by saying that any variations from the site plan were from a lack of awareness or misunderstanding on my part and I'm interested in trying to address each of the issues so that we can resolve them. The reason that certain things are different than the site plan that I was under the understanding that the agreement that we had formed with the Town of New Windsor for preliminary certificate of occupancy detailed certain things that I was to do and I was working off this agreement and didn't see certain things that were definitely on the site plan. I'll explain as I go through the items.

BY MR. PETRO: I was going to ask you if you could explain cause I'm unaware and what is different or should we have the building inspector do that?

BY MR. BABCOCK: There should be a memo.

BY MR. BELINSKI: We have a letter from you folks dated June 30th. It has a list.

BY MS. BELINSKI: For example, regarding the lighting, exterior lighting which is item number nine on the list, in the agreement that we have, the date of this is --

BY MR. VAN LEEUWEN: Are you the sole owners of the property?

BY MR. BELINSKI: Yes, we are.

BY MR. VAN LEEUWEN: What happened to Zimmerman?

BY MS. BELINSKI: Elaine got worn out by the constant controversy with the town and decided that she didn't want to continue to be an owner. She works at Windsor but she is no longer an owner. At any rate

this agreement was signed by the Town and myself on October of 1990 and regarding the exterior lighting item number D states applicant shall change the exterior lighting detail to reflect lighting fixtures which direct light down toward without glare beyond the property boundary of the petitioner. So following that directive, I had erected onto the building five halogen lamps with aluminum casings which are on steel posts that rise above the building which shine the light downward so that the area would be lighted all around the parking, so it goes on three sides of the building together along the side where the driveway is and in the back area where the new parking is. So I actually didn't know that the site plan showed a light pole, I just was following this directive.

BY MR. EDSALL: If I could just comment, the change that you're referencing was a change in the fixture type on the pole, not eliminating the pole. There is downcast type fixtures that are mounted on the poles. Those are the type units that eliminate the casing onto the adjoining properties. That statement it was intended to change the type of fixture, not eliminate.

BY MR. BELINSKI: What we are saying is that we tried to do this without any professional help.

BY MR. EDSALL: I have no problem with it if the Board decides to amend it, but I brought to their attention.

BY MR. BELINSKI: Instead of the one light on the plan there is actually five lights, two in the front of 300 watts each halogen, one on the side that has the driveway going to the rear with a 500 watt halogen and --

BY MS. BELINSKI: You're saying it wrong, three in the front, one on the side and one on the side has 500 watts voltage.

BY MR. VAN LEEUWEN: May I correct you. Your husband was right. He said 500 watts.

BY MS. BELINSKI: There's one in the rear, one in the side and one in the rear but the fixtures do take 300 or 500, so it's a matter of choice.

BY MR. PETRO: I think a lot of these things can be worked out with the building inspector and Mark's comments explain what has to be done, I think the Board has already told you what needed to be done on the approved site plan. I think for us to sit here and go over every one of these items, some of them have to be fixed, no two ways about it. Item number two, we are not aware of any business sign being approved out near the road. It's obvious that there's a purpose for it if the Board, I'm not quite sure that the zoning allows it, but that's something that we need some input because either it's allowed or not.

BY MR. PETRO: If the sign meets the zoning for the area only sign on the property and for the business.

BY MR. EDSALL: There's another sign on the building and now there's another one. If they are set back they have one out near the road, it's not on that property, it's on the right of way.

BY MS. BELINSKI: I just didn't remember that I needed to apply for a permit.

BY MR. EDSALL: It makes sense why it is there.

BY MR. BABCOCK: One of the questions about the permit is that we don't believe that that's your property with the sign.

BY MS. BELINSKI: It isn't, I got permission from Dr. Nogrady to put the sign there.

BY MR. BABCOCK: We can work that out.

BY MR. PETRO: The Board would not have a problem as long as you meet all the variances and have a letter stating it's okay to be on the property. Everybody else in agreement with that?

BY MR. EDSALL: One of the concerns is it may require because of the setbacks signs require setbacks. if you have permission to put it there it may mean that it may need to be on the other side. It may have to have a setback from his neighbor's property.

BY MR. BELINSKI: I was in conference with Dr.

Benninger and Dr. Nogrady over the placement of the sign and it was agreed between them that they prefer to have it on Dr. Nogrady's sign.

BY MR. EDSALL: It may violate the zoning code by having it on that side so it may not be a matter of choice. If you put it on one side you don't need a variance. If you put it on the other side, you need a variance. Unfortunately, that is what they pay me to look at.

BY MS. BELINSKI: What would be the zoning code?

BY MR. EDSALL: Setbacks from property lines to signs.

BY MR. BABCOCK: You're only allowed one freestanding sign per lot so if they already have one they are not going to be allowed to have your sign there, too.

BY MS. BELINSKI: Possible to get a variance?

BY MR. EDSALL: If the Board doesn't object but we have to make sure whatever you do meets the law.

BY MS. BELINSKI: I have been in contact with DOT and they are going to send a man out to check on item number one regarding right of way.

BY MR. PETRO: Mark, what was the other concern?

BY MR. EDSALL: I assume you're going to be finishing up landscaping?

BY MS. BELINSKI: I had that already lined up but I wasn't concerned about going ahead with that before getting the approval.

BY MR. EdSALL: Well, we'll work that out. As far as the striping goes, serious problem is that the handicapped parking space only had 4.3 foot of backout space obviously not usable. Do you have to shift everything down?

BY MS. BELINSKI: We are going to redo that.

BY MR. EDSALL: Correct signage, striping and so on.

BY MS. BELINSKI: Yes.

BY MR. EDSALL: One thing that you're going to formally have to accept and I believe that they have caused less impact to the rear area is they have rotated the entire rear parking area. I think it's an improvement. If the Board concurs with it, they should formally accept it and ask for an as built plan to be stamped.

BY MR. BELINSKI: Can we say something about that? We did believe it was an improvement. We tried to notify you folks that we were attempting to do that. There is behind us woods that protects the homes and the road behind us and by doing this we didn't have to take down any of the trees and we put up the same size parking area as was in the plan and we stayed on our property and within the limits of not having to take down the trees that was protecting the properties around it.

BY MR. PETRO: I have a problem with doing a roll call. I don't know what I'm looking at.

BY MR. EDSALL: In concept I think we discussed it.

BY MR. VAN LEEUWEN: I have no problem with it. What I would suggest have your engineer change this on the plan and bring us a new plan so we can go ahead and approve that.

BY MR. LANDER: You haven't had any accidents back there so less back out space, that's the only thing Mark has on here.

BY MR. PETRO: Make new plan, something that we can see.

BY MR. EDSALL: Parking space need to be restriped so you have the room.

BY MR. LANDER: We need ten foot, not nine.

BY MS. BELINSKI: Front or rear?

BY MR. LANDER: That was number eight, the rear parking area.

BY MR. BELINSKI: We had striped nine spots and I measured it myself.

BY MS. BELINSKI: Eight spots.

BY MR. LANDER: You're not going to --

BY MR. EDSALL: They have excess parking spaces so we can take that out and we can --

BY MS. BELINSKI: We striped in the rear, actually the gentleman who did the striping made this independent decision that it was sufficient to put nine feet in the back and he put ten feet in the front.

BY MR. PETRO: If we don't need a motion, we don't have to make the plans. I think --

BY MR. EDSALL: I think what you should do is the items I brought up which were the concerns can be addressed and then an as built plan submitted and you can take it as an amendment and just put it on record with like you heard earlier we have to try and get on record what was the final approval. We can work with them.

BY MR. PETRO: Work together with Mike and Mark on these comments and get all done, have an as built plan submitted as an amended site plan. We'll look at it and I'm sure as I have already told you if you follow through on all these, we won't have a problem, we'll get a stamp and we'll be all done.

BY MS. BELINSKI: Are you concerned about the placement of the business sign on the property? Because that is another thing that I put in where it seemed logical but I didn't realize it has a spot on the site plan.

BY MR. EDSALL: Well, we'll have to look into it.

BY MR. PETRO: If it meets the setbacks and if it's legal, don't think anybody on the Board would mind if it was 20 feet one way or the other.

BY MR. BELINSKI: We didn't want the sign there because we felt that it would be hit by cars.

BY MS. BELINSKI: I didn't know that it was on the plan at all.

BY MR. EDSALL: The big issues were whether or not you objected to a sign out near the road. You're telling me if it meets zoning, there doesn't seem to be a problem and the rotation of the parking lot and DOT is a formality. We can work that out. The rest of it.

BY MS. BELINSKI: I contacted them.

BY MR. EDSALL: We'll work out the rest of it.

BY MR. PETRO: Thank you for coming in.

BY MR. BELINSKI: Thank you very much, we are very happy to be working with you in finishing this. It's been a long process.

BY MR. EDSALL: Can we put something in the record if as per normal course of events, if there are any items that have to be fixed that are not building code related such as handicapped parking, we have a process wherein you can obtain if everything is is straightened out, you bond for whatever corrective work you have to do or whatever needs to be finished, that would make it possible to get the C.O. So we're resolving these issues. We may want to do that so we don't hold up the C.O. while we are straightening this out.

BY MR. PETRO: Figure up an amount that it would cost to do it and put up a bond in that amount and until you do it, the bond is in place.

BY MR. EDSALL: Once it's finished, it gets returned to you.



McGOEY, HAUSER and EDSALL
CONSULTING ENGINEERS P.C.

RICHARD D. McGOEY, P.E.
WILLIAM J. HAUSER, P.E.
MARK J. EDSALL, P.E.

- ☐ **Main Office**
45 Quassaick Ave. (Route 9W)
New Windsor, New York 12553
(914) 562-8640
- ☐ **Branch Office**
400 Broad Street
Milford, Pennsylvania 18337
(717) 296-2765

15 July 1992

MEMORANDUM

TO: Michael Babcock, Building Inspector

FROM: Mark J. Edsall, P.E., Planning Board Engineer

SUBJECT: WINDSOR COUNSELING GROUP SITE PLAN (87-53)
MEETING WITH APPLICANT 14 JULY 1992

Pursuant to the Planning Board meeting on 8 July 1992, at which time the subject site plan was discussed, on 14 July 1992 the undersigned and Building Inspector Michael Babcock met with Mrs. Sharon Belinski to review the undersigned's memorandum dated 30 June 1992 and the actions necessary to resolve the non-compliances at the site. Mrs. Belinski agreed that the site was completed differently than indicated on the approved plan and agreed that some of the parking spaces were effectively inaccessible as striped.

Following our review of the comments and the conditions on site, the following is to occur:

1. Mrs. Belinski is to have Jerry Zimmerman, the Project Engineer, schedule a Work Session appearance to review the requirements of the site plan amendment. These include, but may not be limited to, reorientation of the rear parking area, deletion of the luminaire light post, re-location of the on-property sign and request for an additional sign at the driveway entrance.
2. The Applicant is to submit a full application to the Planning Board for an amendment to the previously approved site plan.
3. The Applicant will separately apply for a Building Permit for the two signs, which will be denied and referred to the Zoning Board of Appeals, since the signs do not meet setback requirements (one of which is actually on the right-of-way, off the property).

15 July 1992

MEMORANDUM

-2-

4. The paving contractor's subcontractor who performed the striping is to return and properly re-stripe the site. This is to include proper delineation of the handicapped space.

At the time of our visit, none of the site plan deficiencies had been corrected. The purpose of the meeting was merely to review the corrections necessary and the procedures with Mrs. Belinski, such that she can take the proper actions. We will await scheduling of the Work Shop by the Applicant, followed by the normal procedures.

Respectfully submitted,



Mark F. Edsall, P.E.
Planning Board Engineer

MJEmk

cc: James Petro, Planning Board Chairman ✓

A:7-15-4E.mk



McGOEY, HAUSER and EDSALL
CONSULTING ENGINEERS P.C.

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30 June 1992

MEMORANDUM

TO: Michael Babcock, Town Building Inspector

FROM: Mark J. Edsall, P.E., Planning Board Engineer

SUBJECT: WINDSOR COUNSELING GROUP SITE PLAN
NEW WINDSOR PLANNING BOARD NUMBER 87-53

Pursuant to the request of representatives of the Windsor Counseling Group, and your subsequent telephone call to our office, on 25 June 1992, a field review was held to determine the status of the completion of the site work in connection with the subject application approved by the Planning Board. At our site visit, the following items were noted:

1. It appears that the Applicant has completed pavement work within the State right-of-way for NYS Route 94. It should be confirmed that the Applicant had properly received a permit for this work from the NYSDOT, and they have accepted the completed work.
2. The Applicant has installed a business sign approximately 40' off the State road, on the south side of the entrance roadway. This sign is not on the approved site plan.
3. The site plan depicts landscaping at the front area of the two, four-stall parking areas in the front of the building, near the access roadway. Neither of these areas have been landscaped.
4. Parking space number 1, which is designated on the plan as the handicapped space, is impossible to access. The dimension from the end of the parking space to an existing landscaped planning area is 24.3'. As such, the back-out space for the parking space is only 4.3'. The parking spaces appear to be out of place, shifted to the north.

30 June 1992

MEMORANDUM

-2-

5. In addition to the above, the handicapped delineation does not comply with State Code and ANSI requirements. No handicapped parking sign has been provided.
6. It appears that spaces 5 - 8 have also been shifted to the north, since space 5 does not have the "back-out" space as shown on the plan.
7. The layout of the rear parking area (spaces 9 - 15) has been altered such that same is perpendicular to the side driveway, rather than on a 45 degree angle.
8. The rear parking area has deficient dimension for back-out. Same has a dimension of 32.4', rather than the standard 44' normally required. In addition to this deficiency, the parking spaces are 9' in width, not the 10' required by Town Code and as indicated on the approved plan.
9. The luminaire lighting indicated on the plan has not been installed.
10. The business sign shown in front of parking space 7 has been installed on the south side of parking space 4.

Based on the above observations, it is my opinion that the site has not been completed in full compliance with the plan stamped approved by the Board on 27 June 1991. You may want to have this item discussed at the next regularly scheduled Planning Board meeting, such that the Board can provide direction as to the appropriate course of action.

Respectfully submitted,


Mark J. Edsall, P.E.
Planning Board Engineer

MJEmk

cc: James Petro, Planning Board Chairman

A:6-30-E.mk



McGOEY, HAUSER and EDSALL
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14 August 1992

MEMORANDUM FOR RECORD

SUBJECT: WINDSOR COUNSELING SITE PLAN
FIELD VISIT 13 AUGUST 1992

On the subject date the undersigned and Town Building Inspector Mike Babcock visited the site to review the re-stripping work performed for the Applicant. We reviewed the completed work with Mrs. Bolinsky, advising her that same appeared acceptable, in our opinion. We did advise her that it was necessary for her to obtain an acceptable handicapped sign to be mounted at the designated space.

With regard to the Certificate of Occupancy for the site, the Applicant should prepare a revised site plan for the project, reflecting the work as completed. As previously agreed, the Applicant will make an application for a site plan amendment, to reflect the work as completed. The site plan will not include the project signs, which will be the subject of a separate application to the Town Building Inspector and subsequently to the Zoning Board of Appeals. Once the revised plan is available, the Applicant's Engineer should schedule a Work Session appearance, such that the plan and application can be reviewed. Following same, Mike and I indicated that we would forward the application to the Planning Board for the next available agenda, anticipating no problems with approval of this site plan amendment.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'MJE', written over a horizontal line.

Mark J. Edsall, P.E.
Planning Board Engineer

MJEmk

cc: James Petro, Planning Board Chairman

A:8-14-E.mk

CHRONOLOGICAL JOB STATUS REPORT

JOB: 87-56 NEW WINDSOR PLANNING BOARD (Chargeable to Applicant)

CLIENT: NEWWIN - TOWN OF NEW WINDSOR

TASK: 87- 53

TASK-NO	REC	--DATE--	TRAN	EMPL	ACT	DESCRIPTION-----	RATE	HRS.	TIME	-----DOLLARS-----		
										EXP.	BILLED	BALANCE
87-53	5991	11/10/87	TIME	MJE	MC	WINDSOR COUNSEL	40.00	0.50	20.00			
87-53	13555	05/24/88	TIME	EJ	CL	WINDSOR COUNSELLING	17.00	1.00	17.00			
87-53	13200	05/26/88	TIME	MJE	MC	WINDSOR COUNSELING	40.00	0.10	4.00			
87-53	13435	06/02/88	TIME	MJE	MC	WINDSOR COUNSELING	40.00	0.30	12.00			
87-53	13714	06/07/88	TIME	MJE	MC	WINDSOR COU	40.00	0.30	12.00			
87-53	13763	06/07/88	TIME	EJ	CL	WINDSOR COUNSELING	17.00	0.50	8.50			
									73.50			
87-53	17592	08/17/88	BILL Partial Billing								-73.50	
											-73.50	
87-53	28667	01/24/89	TIME	MJE	MC	WINDSOR COUN	60.00	1.00	60.00			
87-53	28529	01/25/89	TIME	MJE	CL		19.00	1.00	19.00			
87-53	28673	01/25/89	TIME	MJE	MC	WINDSOR COUN	60.00	0.20	12.00			
TASK TOTAL									164.50	0.00	-73.50	91.00
GRAND TOTAL									164.50	6.00	-73.50	91.00

AS OF: 02/27/89

PAGE: 1

CHRONOLOGICAL JOB STATUS REPORT

JOB: 87-56 NEW WINDSOR PLANNING BOARD (Chargeable to Applicant)

CLIENT: NEWWIN - TOWN OF NEW WINDSOR

TASK: 87- 77

TASK-NO	REC	--DATE--	TRAN	EMPL	ACT	DESCRIPTION-----	RATE	HRS.	-----DOLLARS-----			
									TIME	EXP.	BILLED	BALANCE
87-77	9432	03/09/88	TIME	MJE	MC	PREKAS L/L & SITE	40.00	0.50	20.00			
87-77	14773	06/21/88	TIME	MJE	MC	PREKAS	40.00	0.30	12.00			
87-77	14922	06/22/88	TIME	NJE	CL	PREKAS	17.00	0.50	8.50			
									40.50			
87-77	17603	08/17/88				BILL Partial Billing					-40.50	
											-40.50	
87-77	27224	01/07/89	TIME	MJE	MC	PREKAS	60.00	0.50	30.00			
87-77	27691	01/09/89	TIME	MJE	MC	PREKAR	60.00	0.50	30.00			
87-77	27698	01/11/89	TIME	MJE	MC	PREKAR	60.00	0.10	6.00			
87-77	27857	01/11/89	TIME	NJE	CL	PREKAS	19.00	0.50	9.50			
87-77	27707	01/13/89	TIME	MJE	MC	PREKAR	60.00	0.50	30.00			
87-77	28720	02/03/89	TIME	MJE	MC	PREKAS	60.00	0.50	30.00			
									176.00			
						TASK TOTAL			176.00	0.00	-40.50	135.50
						GRAND TOTAL			176.00	0.00	-40.50	135.50

Revised Plans

P. B. #87-53

BUILDING INSPECTOR, PLANNING BOARD ENGINEER, FIRE INSPECTOR,
D.O.T., O.C.H., O.C.P., D.P.W., WATER, SEWER, ~~HIGHWAY~~, REVIEW
FORM:

The maps and plans for the Site Approval Windsor ^{Counseling Prop}
Subdivision _____ as submitted by
Zimmerman for the building or subdivision of
_____ has been
reviewed by me and is approved ✓
disapproved _____.

If disapproved, please list reason _____

Fred L. ...
HIGHWAY SUPERINTENDENT FD

WATER SUPERINTENDENT

SANITARY SUPERINTENDENT

DATE

INTER-OFFICE CORRESPONDENCE

TO: Town Planning Board
FROM: Town Fire Inspector
DATE: 27 February 1989
SUBJECT: Windsor Counseling Group

PLANNING BOARD REFERENCE NUMBER: PB-87-53

FIRE PREVENTION REFERENCE NUMBER: FPS-89-018

A review of the above referenced subject site plan/ sub-division was conducted on 27 February 1989.

This site plan is found acceptable.

PLAN DATED: 10 February 1989, Revision 4


Robert F. Rodgers; CCA
Fire Inspector

CC: M.E,

BUILDING INSPECTOR, PLANNING BOARD ENGINEER, FIRE INSPECTOR,
D.O.T., O.C.H., O.C.P., D.P.W., ~~WATER~~, SEWER, HIGHWAY, REVIEW
FORM:

The maps and plans for the Site Approval _____

Subdivision _____ as submitted by

Gerald Zimmerman for the building or subdivision of
Windsor Counseling Group has been

reviewed by me and is approved ✓

~~disapproved~~ _____

If ~~disapproved~~, please list reason _____

Notify water dept. for location of water
service - shut off valve must remain exposed.

HIGHWAY SUPERINTENDENT

Steve D. D'...
WATER SUPERINTENDENT

SANITARY SUPERINTENDENT

DATE

CC: M.E.

Windsor Counseling
87-53

BUILDING INSPECTOR, P.B. ENGINEER,
WATER, ~~SEWER~~, HIGHWAY REVIEW FORM:

The maps and plans for the Site Approval ✓
Subdivision _____ as submitted by
Zimmerman Engineers for the building or subdivision of
Windsor Counseling Group has been
reviewed by me and is approved ✓,
disapproved _____.

If disapproved, please list reason.

HIGHWAY SUPERINTENDENT

WATER SUPERINTENDENT

Lynan D. Masten
SANITARY SUPERINTENDENT

July 17, 1987
DATE



555 UNION AVENUE
NEW WINDSOR, NEW YORK

SITE PLAN APPROVAL

WINDSOR COUNSELING GROUP

✓ The site plan or map was approved by the Bureau of Fire Prevention.

The site plan or map was disapproved by the Bureau of Fire Prevention for the following reason(s).

SIGNED:

CHAIRMAN

Windsor Counseling
87-53

BUILDING INSPECTOR, P.B. ENGINEER,
~~SEWER,~~ SEWER, HIGHWAY REVIEW FORM:

The maps and plans for the Site Approval _____
Subdivision _____ as submitted by
Zimmerman Eng- for the building or subdivision of
Windsor Counseling Group - has been
reviewed by me and is approved ☒
~~disapproved~~ _____.

~~If disapproved, please list reason.~~

will not interfere with water system

HIGHWAY SUPERINTENDENT

Steve D. D. D.
WATER SUPERINTENDENT

SANITARY SUPERINTENDENT

DATE

SHORT ENVIRONMENTAL ASSESSMENT FORM

Appendix B Part 617

Project Title: Site Plan for Windsor Counseling Group

Location: West Side of Route 94, 400' north of Union Avenue

ID Number: _____

INSTRUCTIONS:

- (a) In order to answer the questions in this short EAF it is assumed that the preparer will use currently available information concerning the project and the likely impacts of the action. It is not expected that additional studies, research or other investigations will be undertaken.
- (b) If any question has been answered **Yes**, the project may have a significant effect and the full Environmental Assessment Form is necessary. **Maybe** or **Unknown** answers should be considered as **Yes** answers.
- (c) If all questions have been answered **No** it is likely that this project will not have a significant effect.
- (d) If additional space is needed to answer the questions, please use the back of the sheet or provide attachments as required.

ENVIRONMENTAL ASSESSMENT

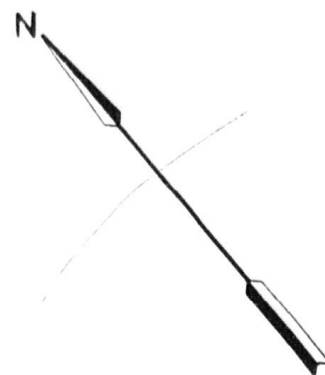
	YES	NO
1. Will project result in a large physical change to the project site or physically alter more than 10 acres of land?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Will there be a major change to any unique or unusual land form found on the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Will project alter or have a large effect on an existing body of water?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Will project have an adverse impact on groundwater quality?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Will project significantly effect drainage flow on adjacent sites?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Will project affect any threatened or endangered plant or animal species?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Will project result in a major adverse effect on air quality?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Will project have a major effect on the visual character of the community or scenic views or vistas known to be important to the community?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Will project adversely impact any site or structure of historic, prehistoric, or paleontological importance or any site designated as a Critical Environmental Area by a local agency?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Will project have a major adverse effect on existing or future recreational opportunities?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Will project result in major traffic problems or cause a major effect to existing transportation systems?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Is project non-farm related and located within a certified agricultural district?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Will project regularly cause objectionable odors, noise, glare, vibration, or electrical disturbance as a result of the project's operation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14. Will project have any adverse impact on public health or safety?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. Will project affect the existing community by directly causing a growth in permanent population of more than 5 percent over a one-year period or have a major negative effect on the character of the community or neighborhood?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Is there public controversy concerning any potential impact of the project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

FOR AGENCY USE ONLY

Preparer's Signature: _____ Date: _____

Preparer's Title: _____

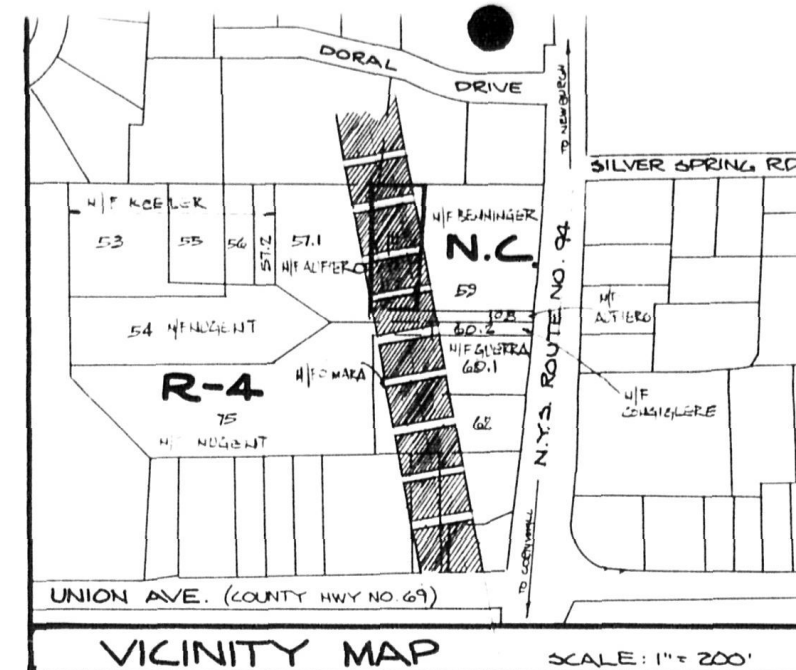
Agency: _____



S19-B-4-L-51
N/F TOMASHEVSKI
L 1884 P 828

S19-B-4-L-50
N/F BRYANT & MORRISON
L 2179 P 1089

NOTE: PROPOSED LIGHTING TO BE
DIRECTED DOWNWARD WITHOUT GLARE
BEYOND THE PROPERTY BOUNDARIES.



VICINITY MAP

SCALE: 1" = 200'

ZONING DATA

DISTRICT: N.C. (USE: A-9 BUSINESS, PROFESSIONAL OR GOVERNMENTAL OFFICES)		REQ'D.	PROVIDED
MIN. LOT AREA = 10,000 S.F.		19,116'	19,116'
MIN. LOT WIDTH = 100'		85'	85'
MIN. FRONT YD. = 40'		48'	48'
MIN. SIDE YD. = 15'/35'		16'/35'	16'/35'
MIN. REAR YD. = 15'		106'	106'

TAX MAP NO.

SECTION: 19
BLOCK: 4
LOT: 58

DEED

LIBER: 2275
PAGE: 826

RECORD OWNER / DEVELOPER

WINDSOR COUNSELING GROUP

TOTAL TRACT AREA

19,116 ± S.F.

NOTE: ALL EXISTING NATURAL
SCREENING SHALL REMAIN
EXCEPT AS NECESSARY TO
IMPLEMENT THIS SITE PLAN

EXISTING ONE CAR GARAGE
TO BE CONVERTED TO
OFFICE SPACE

FEET 4 HIGH OPAQUE PRIVACY
FENCE INSTALLED FROM EXIST.
GARAGE TO PRIVATE
ENTRANCE ROAD

NOTE:

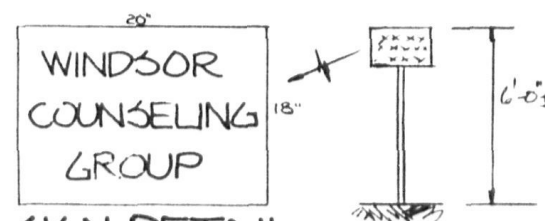
- EXISTING 1 STORY OFFICE
SERVED BY EXISTING WATER
& SEWER
- EXISTING GRAVEL DRIVE TO BE PAVED
FROM N.Y.S. RT. 94 TO THE LIMITS OF RD.
IMPROVEMENT. PAVEMENT SHALL BE (1) ONE
(2) THREE INCH LAYER OF DENSE BINDER
TYPE 2 OR BLACKTOP WITH A BASE OF
SHALE. NO GUTTERS. LIMITS OF RD
IMPROVEMENT

PARKING ANALYSIS

BUSINESS & PROFESSIONAL
OFFICES: 1 SPACE PER
200 S.F. OF FLOOR AREA.

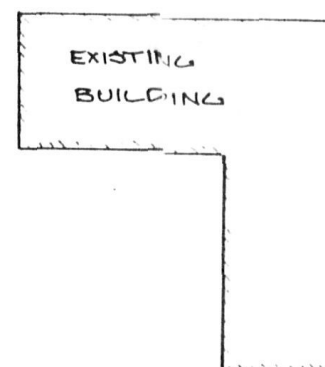
FLOOR AREA = 1,840 S.F. ±

$1,840 \text{ S.F.} \times \frac{1}{200 \text{ S.F.}} = 9.2 \pm \text{SPACES REQUIRED}$
15 SPACES PROVIDED

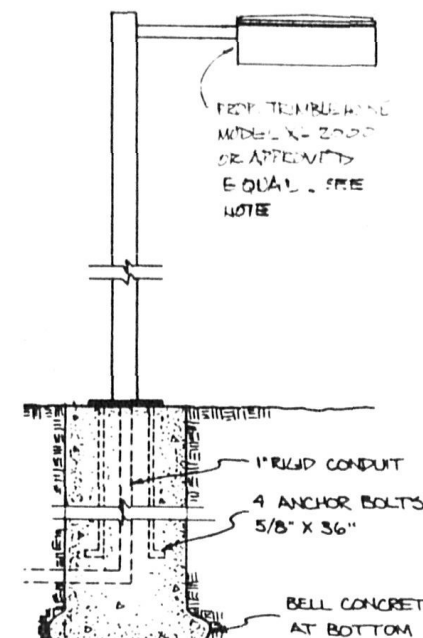


EXIST. SIGN DETAIL

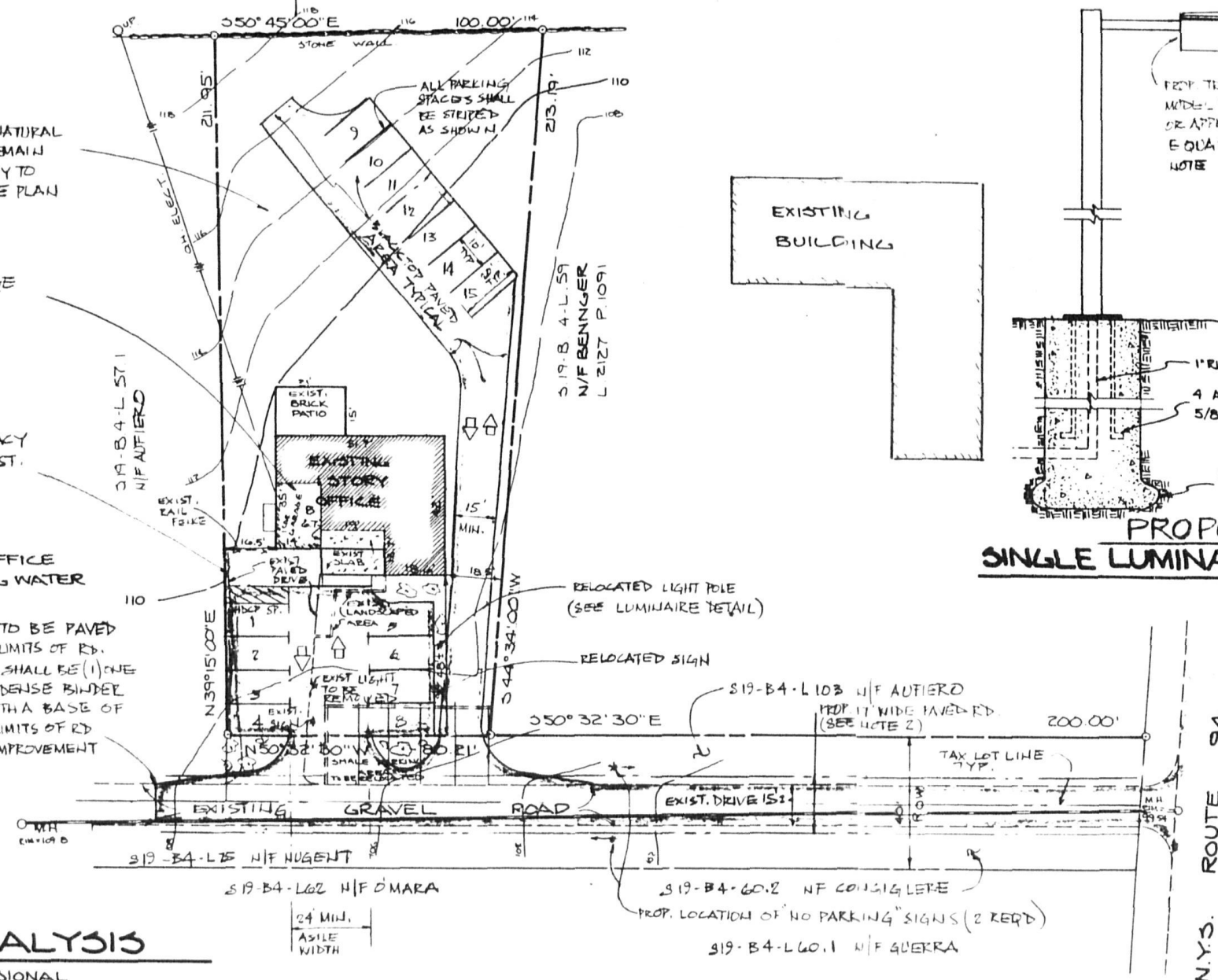
NTS



EXISTING
BUILDING



PROPOSED
SINGLE LUMINAIRE DETAIL



EXIST.
BLDG.

GERALD ZIMMERMAN P.E. LIC. NO. 47391

SHEET 1 OF 1		SITE PLAN FOR WINDSOR COUNSELING GROUP	
REVISIONS		SCALE: 1" = 30'	JOB NO. 85-196
4-13-88		DATE: 6-10-87	DRAWN BY: J.F.
JUNE 7, 1988		TOWN OF NEW WINDSOR	
JUNE 14, 1988		ORANGE COUNTY, NEW YORK	
FEB. 10, 1987		ZIMMERMAN ENGINEERING & SURVEYING, P.C.	
MAY 14, 1990		RT. 17M HARRIMAN, N.Y.	



S.19-B.4-L.51
N/F TOMASHEVSKI
L. 1884 P.828

S.19-B.4-L.50
N/F BRYANT & MORRISON
L. 2179 P.1089

NOTE: PROPOSED LIGHTING TO BE
DIRECTED DOWNWARD WITHOUT GLARE
BEYOND THE PROPERTY BOUNDARIES.

NOTE: ALL EXISTING NATURAL
SCREENING SHALL REMAIN
EXCEPT AS NECESSARY TO
IMPLEMENT THIS SITE PLAN

EXISTING ONE CAR GARAGE
TO BE CONVERTED TO
OFFICE SPACE

PROP. 4' HIGH OPAQUE PRIVACY
FENCE INSTALLED FROM EXIST.
GARAGE TO PRIVATE
ENTRANCE ROAD

NOTE:

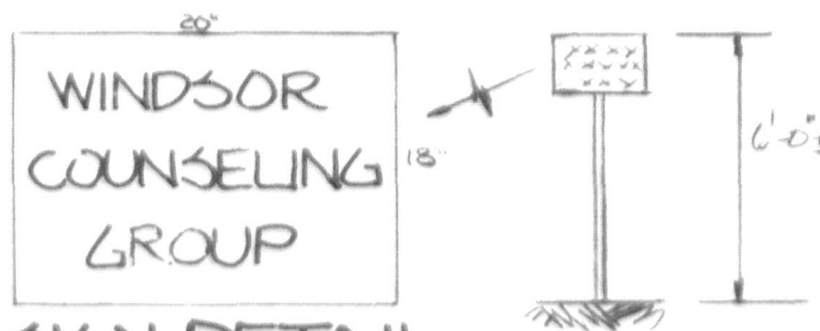
- EXISTING 1 STORY OFFICE
SERVED BY EXISTING WATER
& SEWER
- EXISTING GRAVEL DRIVE TO BE PAVED
FROM N.Y.S. RT. 94 TO THE LIMITS OF RD.
IMPROVEMENT. PAVEMENT SHALL BE (1) ONE
(2) THREE INCH LAYER OF DENSE BINDER
TYPE OR BLACKTOP WITH A BASE OF
SHALE. NO SUTTERS. LIMITS OF RD.
NEED BE PROVIDED IMPROVEMENT

PARKING ANALYSIS

BUSINESS & PROFESSIONAL
OFFICES: 1 SPACE PER
200 S.F. OF FLOOR AREA.

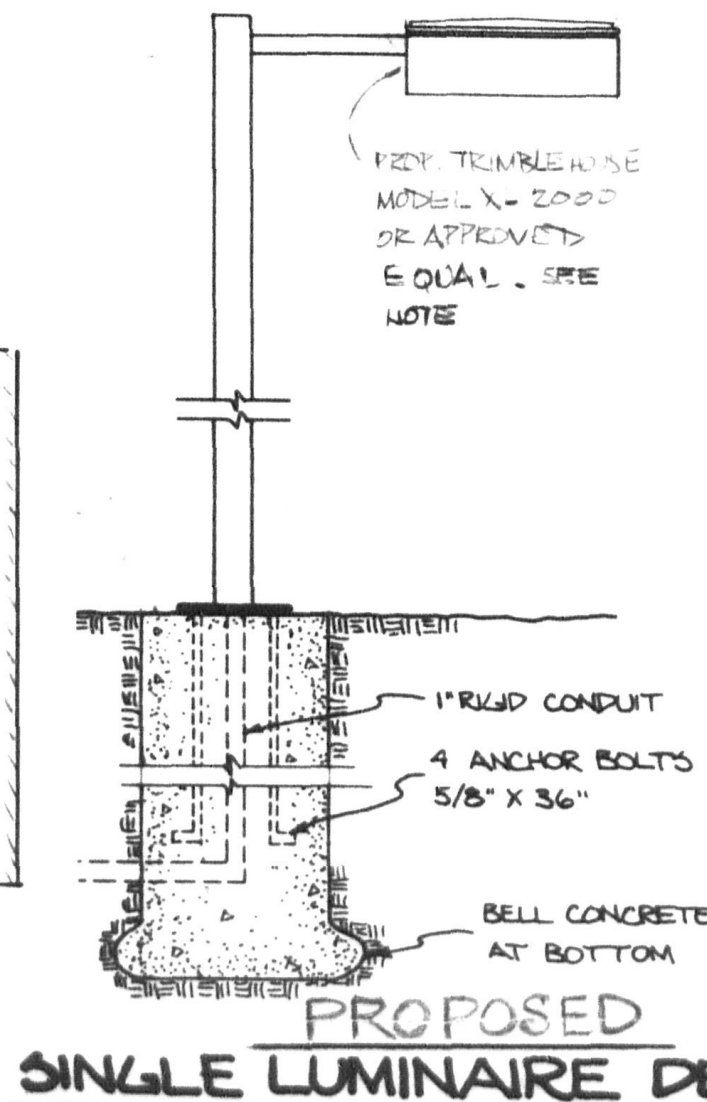
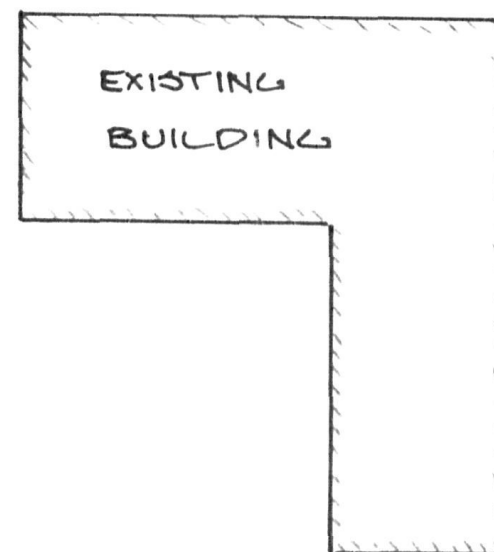
FLOOR AREA = 1,840 S.F. ±

$1,840 \text{ S.F.} \times \frac{1}{200 \text{ S.F.}} = 9.2 \pm \text{SPACES REQUIRED}$
15 SPACES PROVIDED

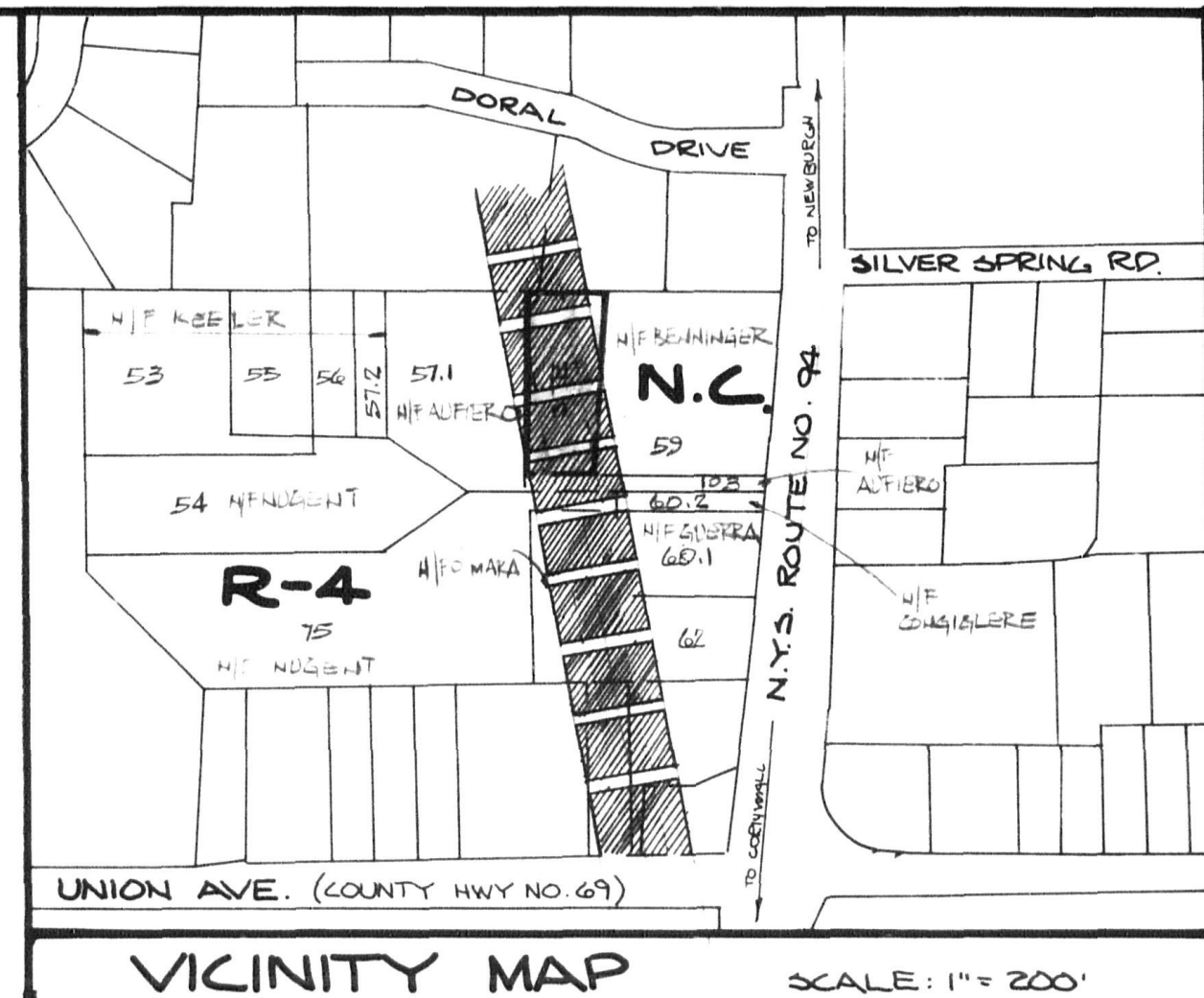


EXIST. SIGN DETAIL

NTS



PROPOSED
SINGLE LUMINAIRE DETAIL



ZONING DATA

DISTRICT: N.C. (USE: A-9 BUSINESS, PROFESSIONAL OR GOVERNMENTAL OFFICES)	REQ'D.	PROVIDED
MIN. LOT AREA = 10,000 S.F.	19,116'	19,116'
MIN. LOT WIDTH = 100	85'	85'
MIN. FRONT YD. = 40'	48'	48'
MIN. SIDE YD. = 15'/35'	16'/35'	16'/35'
MIN. REAR YD. = 15'	106'	106'

TAX MAP NO.

SECTION: 19
BLOCK: 4
LOT: 58

DEED

LIBER: 2275
PAGE: 826

RECORD OWNER & DEVELOPER

WINDSOR COUNSELING GROUP

TOTAL TRACT AREA

19,116.3 S.F.

SITE PLAN APPROVAL GRANTED
BY TOWN OF NEW WINDSOR PLANNING BOARD
ON JUN 27 1991

BY *Ronald Lander*
RONALD LANDER
SECRETARY



GERALD ZIMMERMAN P.E. NO. 47391

SITE PLAN FOR WINDSOR COUNSELING GROUP			
SHEET 1 OF 1	REVISIONS	SCALE: 1" = 30'	JOB NO. 85-196
	4-13-88 JUNE 7, 1988 JUNE 14, 1988 FEB. 10, 1989 MAY 14, 1990	DATE: 6-10-87	DRAWN BY: J.F.
TOWN OF NEW WINDSOR ORANGE COUNTY, NEW YORK			
ZIMMERMAN ENGINEERING & SURVEYING, P.C. RT. 17M HARRIMAN, N.Y.			